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Supreme Court of the United States

OCTOBER TERM, 1962

No. 107

FRANK W. McCULLOCH, CHAIRMAN, and PHILIP RAY RODGERS, ET AL., MEMBERS, NATIONAL LABOR RELATIONS BOARD, PETITIONERS

vs.

SOCIEDAD NACIONAL DE MARINEROS DE HONDURAS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED MAY 7, 1962
CERTIORARI GRANTED JUNE 11, 1962

Supreme Court of the United States

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[fol. 1] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4020-'61

SOCIEDAD NACIONAL DE MARINEROS DE HONDURAS, PUERTO CORTES, DEPARTMENT OF CORTES, HONDURAS, PLAINTIFF

v.

FRANK W. MCCULLOCH, CHAIRMAN, and PHILIP RAY RODGERS, BOYD LEEDOM, JOHN H. FANNING, and GERALD A. BROWN, MEMBERS, NATIONAL LABOR RELATIONS BOARD, WASHINGTON 25, D. C., DEFENDANTS

COMPLAINT—(To set aside Decision and Direction of Election of the National Labor Relations Board; for Temporary Restraining Order and Preliminary and Permanent Injunctions)—Filed Dec. 16, 1961

The plaintiff, Sociedad Nacional de Marineros de Honduras, for its cause of action represents to the Court as follows:

1. *Jurisdiction and Parties*

1. This action arises under the Constitution of the United States, under the National Labor Relations Act, particularly Section 9 of the Act (49 Stat. 453, 29 U.S.C. § 159), and under the Administrative Procedure Act, particularly Section 10 of the Act (60 Stat. 243, 5 U.S.C. § 1009). The matter in controversy exceeds the value of $10,000.00, exclusive of interest and costs.

2. Defendants are members of the National Labor Relations Board (Board), an agency of the United States, having been duly appointed under and by virtue of the provisions of Section 3(a) of the National Labor Rela-

tions Act (49 Stat. 451, 29 U.S.C. § 153) and having their principal office in the District of Columbia.

[fol. 2] 3. Plaintiff, Sociedad Nacional de Marineros de Honduras (Sociedad), is a labor union organized and existing under the laws of the Republic of Honduras with its head offices in Puerto Cortes, Department of Cortes, Honduras, and is an entity authorized to bring this suit in the association name.

4. Empresa Hondurena de Vapores, S.A. (Empresa), is a corporation duly organized in 1941 under the laws of the Republic of Honduras, with its principal office and place of business at Puerto Cortes, Honduras. Empresa is in the business of owning and/or operating a fleet of seagoing vessels which are registered under the laws of Honduras and fly the Honduran flag. Its vessels are manned by unlicensed seamen, all of whom are members of Sociedad, employed in Honduras under shipping articles executed in Honduras. All of the seamen supplied to Empresa by Sociedad are citizens of Honduras except one who is a Jamaican citizen and a subject of Great Britain.

Empresa is a wholly-owned subsidiary of United Fruit Company, a New Jersey corporation. Plaintiff is informed that none of Empresa's officers or directors is employed by, or associated with, United Fruit Company and that since its formation in 1941, all of Empresa's officers and directors have resided in Honduras.

5. Sociedad is recognized by the Republic of Honduras as the sole collective bargaining agent of Empresa's seamen employees. Collective bargaining agreements have been in effect between Empresa and Sociedad since 1942. The agreement now in effect is dated March 29, 1957. With certain adjustments as to wages and related matters, this contract has been in effect at all times since said date and has been renewed by its terms until April 15, 1963. (A copy and translation are attached as Exhibit 1.) [fol. 3] At no time has Sociedad acted as bargaining representative of employees of United Fruit Company, and United Fruit Company has never participated in collective bargaining with Sociedad.

6. Because Sociedad is the sole bargaining agent of Empresa's seamen employees, Sociedad and its members

are forbidden under Art. 499, para. (f), of the Honduran Labor Code to take part in any activity which would have the effect of denying the exclusive jurisdiction of the Honduran labor authorities to regulate labor relations. In this connection, Sociedad is advised that Empresa has received from the Government of Honduras an official ruling of its Ministry of Labor to the effect that the action of the National Labor Relations Board in this case, in assuming jurisdiction over Empresa and its unlicensed seamen and in directing the election hereafter referred to, is a violation of the sovereignty of the Republic of Honduras and is null and void under its law. (A translation of the said ruling is attached as Exhibit 2.)

7. On November 15, 1961, the Board rendered its Decision and Direction of Election, Case No. 2-RC-10378, re *United Fruit Company and National Maritime Union of America, AFL-CIO* (a copy of which Decision and Direction of Election is attached as Exhibit 3). In the proceeding, National Maritime Union of America, AFL-CIO (NMU), petitioned for a representation election aimed at entitling it to represent the unlicensed seamen employed by Empresa. The Board held that because of certain ties which it thought existed between the foreign company, Empresa, and the domestic company, United Fruit Company, that Empresa came under the jurisdiction of the Board. The Board directed the holding of an election among the employees of Empresa to determine their representation for collective bargaining [fol. 4] purposes either by NMU or by the Union known as Sindicato Maritimo Nacional (sic) de Honduras, "Sindimar", or by neither. Plaintiff Sociedad was not a party to the proceeding, did not participate in any way, and was not included in the Board's order as a union for which Empresa employees might vote as their representative. Plaintiff has not been advised by the Board with respect to the carrying out of the Board's order of election, but has been informed by Empresa that the election is scheduled to take place commencing Sunday, December 17, 1961, by balloting on board vessels owned or operated by Empresa upon their arrival in ports of the United States between December 17, 1961, and

January 31, 1962, and by mailing ballots to said employees aboard vessels not scheduled to call at United States ports between said dates.

8. However, under the laws of Honduras, the petitioner in Board Case No. 2-RC-10739, NMU, cannot gain recognition by the Honduran Government and could not lawfully represent the unlicensed seamen of plaintiff not only because Sociedad is the exclusive bargaining agent, but also because of Articles 490 and 504 of the Honduran Labor Code, which provide (in translation) as follows:

> "Article 490: No union may be permitted to act as such nor to exercise the functions prescribed to it by law or by its respective by-laws, nor to exercise its rights so long as it does not have recognition of its juridic personality, and may act as such only during the time it is so recognized."
>
> "Article 504: No union may function whose personnel is not composed of at least ninety percent (90%) of Honduran citizens. No matter what is the form of direction of the union, no alien is eligible for directive posts."

NMU does not have Honduran recognition of its juridic personality, nor are at least 90% of its personnel Honduran citizens.

Furthermore, if "Sindimar" should prevail in the election ordered by the Board, there will have been created an irreconcilable conflict under Honduran law because of Sociedad's exclusive bargaining position.

[fol. 5] 9. The Board had no jurisdiction to direct an election among the members of the plaintiff organization, and in so directing acted in excess of its powers. The Supreme Court of the United States held in *Benz* v. *Compania Naviera Hidalgo, S.A.*, 353 U.S. 138 (1957), that the Labor Management Relations Act of 1947 (Chapter 7, Title 29 of the United States Code) does not apply to labor relations between nationals of foreign countries operating vessels under foreign laws and their foreign workers. In *Leedom* v. *Kyne*, 358 U.S. 184 (1958), the Supreme Court held that a District Court had the jurisdiction and the power to vacate an order of the Board

because it had been made in excess of the Board's powers. These decisions clearly establish the jurisdiction and duty of the Court to grant the relief requested in this case.

10. In addition, by taking jurisdiction and acting in this case the Board violated the Constitution of the United States in the following respects:

a. *Article VI* of the Constitution is violated because the action of the Board contravenes the provisions of the Treaty of Friendship, Commerce and Consular Rights between the United States of America and the Republic of Honduras dated December 7, 1927, 45 Stat. 2618 (1927). Article 10 of this treaty states:

> "Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown."

The Government of Honduras has protested the Board's action in the instant proceeding in a note to the Secretary [fol. 6] of State of the United States dated November 29, 1961 (a copy of which is attached as Exhibit 4). Honduras claims the action of the Board constitutes a direct violation of its treaty rights with the United States.

The Government of the United States in a brief amicus filed with the Board earlier in Case No. 2-RC-10379 pointed out that a direct treaty violation would be involved if there was a failure on the part of the United States to treat merchant vessels flying the flag of Honduras as vessels of that nation.

b. *Article II, Section 2* of the Constitution is violated because the Board action is in disregard of the principles of international law recognized and adhered to by the Department of State and infringes upon the functions and powers granted to the Executive Department of the United States Government to conduct the foreign affairs of the United States.

c. *Article I, Section 8* of the Constitution would be violated if the Board's action were to be held within its

jurisdiction under the National Labor Relations Act because in granting such authority to the Board, Congress would have exceeded the powers entrusted to it under the Constitution.

d. *Amendment* V of the Constitution which protects plaintiff against deprivation of its "liberty, or property, without due process of law", has been violated in that the order of the Board impairs the collective bargaining contract in effect between plaintiff and the employer, Empresa.

11. Plaintiff and its members will suffer immediate and irreparable damage unless the defendant Board, its agents, servants, employees, attorneys and all persons acting for and in concert with it are enjoined from conducting an election among the seamen employees of [fol. 7] Empresa, in the following respects, among others.

a. Plaintiff will be denied the protection and rights granted to it under the laws and Constitution of the United States;

b. Plaintiff will be caused to violate its existing collective bargaining agreement with Empresa and may be subjected to damages and other sanctions as a consequence thereof;

c. Plaintiff's members will be caused to violate Honduran law by participating in the election pursuant to the Board's order in the instant proceedings and may thereby be subjected to penalties and other sanctions under Honduran law;

d. The operation of Empresa's vessels will be impaired and plaintiff's relations with Empresa will be seriously disturbed and disrupted, all to plaintiff's loss and economic disadvantage.

12. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays that the Court issue an immediate temporary restraining order enjoining the holding of an election under the aforesaid Decision and Direction of Election of the Board until the matter may be heard on plaintiff's motion for preliminary injunction.

Plaintiff prays that the Court issue a preliminary injunction restraining the Board from conducting an elec-

tion, and that on final hearing, this preliminary injunction be made permanent, restraining the defendant Board, its agents, servants, employees, attorneys and all persons acting in concert with it from carrying out the Board's aforesaid Decision and Direction of Election dated November 15, 1961, and from conducting an election among plaintiff's members and prays that the Board's Decision and Direction of Election be vacated.

[fol. 8] Plaintiff prays that this Court grant such other and further relief as is just.

Respectfully submitted,

Charles S. Rhyne
Brice W. Rhyne
Herzel H. E. Plaine
Lenox G. Cooper
RHYNE & RHYNE
400 Hill Building
Washington 6, D. C.

By /s/ Herzel H. E. Plaine
HERZEL H. E. PLAINE
Attorneys for Plaintiff

December 16, 1961

[fol. 9] VERIFICATION

District of Columbia)
City of Washington) ss.:

Brice W. Rhyne, being duly sworn, says that he is one of the attorneys in fact for the plaintiff in this action, pursuant to a power of attorney executed in the Republic of Honduras on December 13, 1961; that the foregoing complaint is true of his own knowledge except as to the matters stated to be alleged upon information or belief, and that as to those matters he believes them to be true. The sources of deponent's information and the grounds for his belief are the record and exhibits in Case No. 2-RC-10739 (*United Fruit Company and National Maritime Union of America, AFL-CIO*) before the National Labor Relations Board, which proceeding resulted in the Decision and Direction of Election dated November 15, 1961, under which the defendant Board proposes to take action herein sought to be enjoined, and the papers filed in the United States District Court Southern District of New York in Empresa Hondurena de Vapores, S.A. against Ivan C. McLeod, Regional Director for the Second Region of the National Labor Relations Board, 61 Civ. 4413.

This verification is made by deponent and not by an officer of the plaintiff because all of plaintiff's officers reside in the Republic of Honduras and none is presently within the United States.

/s/ Brice W. Rhyne
BRICE W. RHYNE

Sworn to before me this
16th day of December, 1961

[SEAL] /s/ Edward D. Coxen
Notary Public, D. C.

[fol. 10] EXHIBIT 1 TO COMPLAINT

Empresa Hondurena De Vapores, S.A.
Authorized Translation of Collective Contract for
Maritime Work with Sociedad Nacional
De Marineros De Honduras
Effective April 16, 1957

EMPRESA HONDURENA DE VAPORES, S.A.
AUTHORIZED TRANSLATION
COLLECTIVE CONTRACT FOR MARITIME WORK:

The undersigned, FRANCISCO COSENZA AREVALO, of age, married, merchant and residing in the Sectional District of Puerto Cortes, Department of Cortes, as party of the first part, acting in name and representation of the maritime workers association called "SOCIEDAD NACIONAL DE MARINEROS DE HONDURAS", organized and existing under the laws of the Republic of Honduras, with head offices in Puerto Cortes, Department of Cortes, and recognized as a juridic person by the Executive Power in Acuerdo No. 1582 issued through the Ministry of the Interior, Justice, Sanitation, and Public Welfare, under date of May 17, 1940; and Mr. Cosenza Arevalo acting as President of the Board of Directors of said Association and as its Representative, in accordance with the provisions of Article 27, Letter A) of its bylaws; and JOSEPH FELIX AYCOCK, of age, widower, Business Agent and with residence in the city of San Pedro Sula, D.D., Department of Cortes, as party of the second part, acting in name of and representation of the Corporation called "EMPRESA HONDURENA DE VAPORES, S.A." organized and existing under the laws of the Republic of Honduras, with head office in the port of Puerto Cortes, Department of Cortes, and recognized as a juridic person by the Executive Power in Acuerdo No. 1383 issued through the Ministry of the Interior, Justice, Sanitation and Public Welfare under date of March 28, 1941; and Mr. Aycock acting as President of the Board of Directors of said Corporation and as its legal representative, in accordance with the provisions of Article 26 of its bylaws; hereinafter the "Sociedad

Nacional de Marineros de Honduras" shall be called "the Association" and the "Empresa Hondurena de Vapores, S.A." shall be called "the Company"; and the parties Cosenza Arevalo and Aycock, in the name of their constituents, have agreed to enter into, as indeed by these presents they do enter into, the following collective contract for maritime work:

1. While this contract is in effect, the Company by these presents recognizes the Association as the sole representative of all seamen employed or to be employed on board the Honduran flag ships owned by, operated by, or for which the Company is agent, in all things pertaining to conditions of employment with the Company, or to the disputes, or controversies that may arise between said seamen and the Company regarding conditions of work on board the vessels or to the stipulation of this contract. Consequently all members of the Association that may be employed on the Company's ships shall be subject to and must comply with the stipulations of this contract.

2. This contract is applicable only to such seamen who are not required to put up a bond for the discharge of their duties or who do not hold on board a technical or professional position for the discharge of which a certificate of competence may be required, and therefore it shall not apply to the Captain and other Officers of the ship.

[fol. 11] 3. During the term of this contract the Company obligates itself to employ exclusively on board its ships, and the Association obligates itself to furnish seamen who are members of the association, after their status as such has been established, and who possess the required experience, knowledge and capacity for the performance of their duties on board; but if the Association does not have available or cannot furnish at any given moment the number of seamen of the specified qualifications requested by the Company, the latter may in that case employ seamen who are not members of the Association. It is also understood that this clause shall not hinder or restrict in any way the right which the Company has of reemploying and to continue employing and

freely using such seamen who may return to work after an absence due to illness, accident, leave of absence or vacation.

4. Any seaman about to be employed on board the Company's ships shall have to be in good health and pass previously and successfully the medical examination prescribed by the Company, who may refuse employment to any seaman who, in the judgment of the Company's doctors may not possess the conditions of health necessary for the performance of the duties to be assigned to him on board.

5. During the life of this agreement the Company obligates itself to keep and maintain all of its vessels in a safe and seaworthy condition and at all times to maintain the lifesaving equipment, machinery, gear, and other equipment in good operating condition.

6. Whenever a Company's ship should be in a foreign port stranded or under repairs, or being cleaned, or for other reasons, and it should become necessary for these reasons to take her crew ashore, the Company agrees to continue paying to the members of the crew so landed their salaries as provided in Article 12 of this contract: and during the period that such members of the crew who are living ashore, the Company shall furnish them room and board at whatever appropriate place the Company may select, until such time as the ships shall be in condition to take the crew aboard, or until such time as such seamen shall be repatriated or transferred to the crew of another ship, whichever of these occurs first; it being understood that the Company shall have the option of giving in cash to each seaman in United States Currency, or its equivalent in Lempiras or in the currency prevailing in the place of payment, the cost of his room and/or board, which shall be per day per person the following:

a)	For Room Allowance	$3.00
b)	" Breakfast	1.25
c)	" Lunch	1.25
d)	" Supper	1.25

7. Venereal Disease: Whenever a member of the crew should be left on shore before the termination of his

contract of engagement, for his medical treatment or hospitalization because he is impeded or unable to perform his duties on board the ship owing to some venereal or syphilitic disease, the Company shall have no obligation to support him or pay him any salary whatsoever while he remains on shore or during the duration of his illness, or while he remains unable to perform his duties, or during the time after his recovery that he may have to wait to be re-employed on board; it being understood that if the Company should incur expenses for the board, lodging, treatment, hospitalization or medical attention [fol. 12] of such seaman, such expenses shall be reimbursed by him to the Company in a proportion to be determined by the Company itself and through deductions that the Company shall make periodically from his salary.

Should the Company not re-employ such seaman, and he has been left on shore in a port other than the port of his engagement, it shall repatriate him as provided in Article 15 of this contract.

8. Every member of the association who is a member of the crew of any of the Company's ships shall at all times be under the orders of the Captain whose instructions and those of the officers of the ship he shall obey at all times. The Company may at any time dismiss any member of the crew whose services or conduct, in the judgment of the Company, may not be satisfactory, or if he should disobey the orders of the Captain and any other Officers of the ship, or for insubordination or disregard of the ship's discipline, without prejudice to other responsibilities to which he may be liable. In the event any seaman is so dismissed in a foreign port the Company shall repatriate him in the manner provided in Article 15 of this contract. Any member of the crew who considers that he has been unjustly dismissed may appeal the matter direct to the management of the Company. If the matter is not satisfactorily settled on this level, in such event, the matter shall be considered a dispute and must be handled and disposed of in the manner provided for in Article 11 of this contract.

9. MARITIME LABOR ACCIDENTS:

(a) It is agreed that any loss of life or any temporary or permanent incapacity that any seaman employed on board a Company ship may sustain, while this contract is in effect, as a direct result of a maritime labor accident, shall be compensated by the Company in accordance with the provisions of Title XI of the Organic Law of the National Merchant Marine of Honduras (Decree No. 55 of March 3, 1943.) It is further agreed that the accidents contemplated by this clause are those defined by Article 35 of said Law as maritime labor accidents.

(b) If a member of the crew, due to his temporary incapacity claimed by him to have been caused by an injury, wound or corporal infection classified as a maritime labor accident, stays or is left in port for his cure, medical attention or hospitalization, the Company shall pay him, pending investigation of such accident and while such seaman is on land receiving medical treatment, or waiting to be re-employed or repatriated, one-half of his monthly salary, (and also Four Lempiras (L. 4.00) per day for his maintenance and lodging during the time that he is not hospitalized). This payment shall end on the day that the incapacity is cured or declared to be a permanent one, or on the day that such seaman is re-employed or repatriated, whichever of these occurs first. If, as the result of the investigation, it is found that the incapacity in question was not caused by the alleged labor accident, and that the seaman is not entitled to the compensation provided in Article 44 of said Law, the seaman shall reimburse the Company the one-half monthly salary so paid him, such reimbursement to be made through periodic deductions that the Company shall make from the seaman's salary.

(c) If any member of the crew should lose his life as a result of such maritime labor accident, it is agreed that in the absence of a will left by such seaman designating a beneficiary of the death benefit provided in paragraph (d) of said Article 44 of Decree No. 55 of March 3, 1943, such death benefit shall be paid only to the legitimate or acknowledged natural relatives of the [fol. 13] seaman mentioned in numerals 1, 2, and 3 of

said paragraph (d) of Article 44 of said Decree No. 55. Therefore, no such payment shall be made to the unrecognized natural descendants, ascendants, brothers or collateral relatives of the seaman.

(d) The Company may at its own option contract with private insurance companies for the payment of the compensations specified in the preceding paragraphs (a), (b) and (c), and if this should be arranged, the Company shall be relieved from the obligation to pay said compensations, which shall then be paid directly by the insurance company engaged for the purpose.

10. The Company obligates itself to dismiss from its employ, upon termination of ship's voyage, any member of the crew, whom the Association may notify in writing that he is not an active member of the Association. The Association and the Company mutually agree that they will not discriminate against any man because of race, creed, or color.

11. It is agreed that during the term of this contract, there shall be no lockout ordered by the Company, nor declaration of strikes or suspension of work decreed by the Association or its members, on account of labor controversies or for any other causes. If any disputes or differences should arise between the contracting parties, it shall be resolved thus:

The matter in dispute shall be submitted to the decision of two arbitrator[s] of fact, one named by each party who shall be impowered to name a third in case of discord between said arbitrators. If any of the contracting parties should fail to name its arbitrator within ten days after being called upon to do so, or if the arbitrators named by the parties should not agree in naming a third, in that case the Commandant of the Honduran port of arrival of the ship shall make the appointment. The decision of the arbitrator of fact, or of the third in its case, shall be final and binding to the parties, and against it there shall be no appeal whatsoever, producing the effect of a firm sentence with the authority of "res judicata".

Any dispute arising during the voyage of a ship, shall be resolved in the manner prescribed in this article as soon as the vessel reaches a Honduran port, but if the vessel is not returning to Honduras within a term of 60 days, then the dispute shall be submitted abroad to the decision of the Official or person designated by the Government of Honduras for that purpose, and his decision shall have the same final effect as the decisions of the aforesaid arbitrators of fact.

12. WAGES: During the term of this contract, the Company shall pay to the rating listed below, when carried the following monthly wages in United States Currency, or its equivalent in Lempiras or in the currency prevailing in the place of payment:

I.	DECK DEPARTMENT	
	Carpenter	$160.00
	Boatswain	153.50
	Carpenter-Boatswain	160.00
	A. B. Seaman	140.00
	Ordinary Seaman	120.00
	*First Pumpman	166.00
	*Second Pumpman	153.50
	*Storekeeper	148.00
	*Painter	140.00

[fol. 14]

II.	ENGINE DEPARTMENT	
	Oiler	151.00
	Fireman for Oil Burning Vessels	140.00
	Wiper	125.00
	Utility Man	125.00
III.	STEWARD'S DEPARTMENT	
	Chief Steward and Cook	$210.00
	Chief Cook	210.00 A
	Chief Cook	196.00 B

* F. R. Hart only

A—On the steamships *MUSA, PLATANO, IRIONA, LA PLAYA, AZTEC, TOLTEC, MAYA, MABAY, MANAQUI, COPAN, CHOLOMA, CHOLUTECA, F. R. HART, ALMIRANTE, ARAGON, ATENAS.*

B—On the steamships *LEMPA, LEON, TELDE, OROTAVA.*

Second Cook	160.00	
Baker	160.00	
Second Cook and Baker	175.00	C
Second Cook and Baker	162.00	D
Second Cook and Baker	156.00	E
Utilityman	125.00	
Endman	120.00	
Saloonman	132.00	
Officers' Messman	125.00	
Messman	120.00	
Messboy	115.00	

C—On the steamships *IRIONA, AZTEC, TOLTEC, MAYA, MUSA, PLATANO, F. R. HART, ALMIRANTE, ARAGON, ATENAS.*

D—On the steamships *LA PLAYA, MABAY, MANAQUI, COPAN, CHOLOMA, CHOLUTECA.*

E—On the steamships *TELDE, OROTAVA, CUBAHAMA, LEMPA, LEON.*

These wages shall be paid from the day when the seaman signs the roll of the crew until the day his services cease on board. Any seaman who fails to sail with his ship at the specified time shall lose his rights to salary from that date.

13. VACATIONS: After one year of continuous service on the Company's vessels, the Company shall grant annually to each member of the crew enumerated in Clause 12 vacation with pay, thus:

(a) After the first year of continuous service, seven calendar days' vacation.

(b) After two years of continuous service the Company shall grant an annual vacation of fourteen calendar days.

(c) After five years of continuous service the Company shall grant an annual vacation of 21 calendar days.

(d) The continuity of services for the purposes of this article will not be considered interrupted by leaves of absence granted for sickness, accident or granted for other legitimate reasons nor for time lost due to lay-offs. Nevertheless said periods of absence from active service will not be counted in computing the year's service for the granting of vacations.

Said vacations may be accumulated up to a total not to exceed 28 calendar days, it being understood that the Company shall grant vacations at the time of the year most convenient to it, or when its maritime services permit.

[fol. 15] 14. ILLNESSES:

(a) NONOCCUPATIONAL AND NONCULPABLE ILLNESS: If any member of the crew should become ill on board the ship and he should be left on shore for his care, and if the illness is not occupational and does not proceed from a culpable act of the seaman himself, the Company shall pay him for its own account his medical, surgical, pharmaceutical and hospitalization expenses, (and also FOUR LEMPIRAS (L.4.00) per day for his maintenance and lodging during the time that he is not hospitalized), it being understood that the Company shall make these payments until the seaman is cured or until the illness is declared incurable or of a permanent character, or until the seaman is re-employed or repatriated, whichever of these occurs first, but in no case will the Company make these payments when the illness proceeds from the culpable act of the seaman himself.

(b) OCCUPATIONAL ILLNESS: If a member of the crew should be left on shore due to his having contracted on board in the service of the ship an occupational illness not caused by his own fault, the Company shall pay him for its own account, while he remains ashore undergoing medical and hospital treatment, one-half of his monthly salary and also his medical, surgical, pharmaceutical and hospitalization expenses, (and in addition FOUR LEMPIRAS (L.4.00) per day for his maintenance and lodging during the time that the seaman is not hospitalized) until the seaman is cured and has been declared fit for duty, or until his occupational illness is declared incurable or of a permanent character, or until the day that such seaman is re-employed or repatriated, whichever of these occurs first, these

payments to be continued in the event that such seaman is repatriated before he is cured or before his occupational illness is declared incurable or of a permanent character. It is expressly understood that all of these payments shall be made in lieu of the benefits provided in paragraphs 1 and 2 of Article 42 of Decree No. 55 of March 3, 1943. Likewise if the occupational illness is declared incurable or of a permanent character, such crew member shall receive such benefits as are provided in Article 44 of said Decree No. 55, according to the degree of his permanent incapacity caused by such occupational illness.

For the purposes of this Article the term "occupational illness" shall be understood to mean any illness which a crew member may contract on board the ship as the immediate consequence and direct result of the work that he performs on board. Hence, any other illness not falling within this definition does not confer any rights to the benefits provided in this Article but are controlled by the provisions of Article 7 and paragraph (a) of Article 14 of this contract.

15. REPATRIATION: Whenever any member of the crew is left on shore, *in a port other than the port of engagement*, due to his illness, injury, discharge, shipwreck, or for any other cause, the Company shall repatriate him for its own account to the port of engagement, or to the port where the voyage began, or to the port which he and the Company may mutually agree upon. Such repatriation shall [fol. 16] cover only the cost of transportation and maintenance of the seaman during the trip. If the seaman is able to work, the Company may discharge its obligation to repatriate him by providing him employment aboard any Company vessel proceeding to the port of repatriation.

16. HOURS OF WORK: The hours and working conditions for members of the crew shall be as follows:

(a) *Deck and Engine Department:*

The regular working hours for day workers will be eight hours per day, Monday through Fridays and four hours on Saturdays in the forenoon, both at sea and in port. Overtime will be paid for any work in excess of eight hours per day Monday through Friday, and work in excess of four hours on Saturday and for any work performed on Sunday or holidays, at the overtime rate stipulated in paragraph (h) of this article.

The regular working hours for men on watch shall be eight hours per day at sea and in port provided, however, that overtime will be paid for any work in excess of 8 hours per day and for work performed in any port on Saturday afternoon, Sundays, or Holidays at the overtime rate stipulated in paragraph (h) of this article.

(b) *Steward's Department:*

The regular working hours for members of the Steward's Department shall be eight hours daily in a spread of fourteen hours both at sea and in port provided, however, that any work performed in excess of such hours and any work performed in any port on Saturday afternoon, Sunday or Holidays shall be paid for at the overtime rate stipulated in paragraph (h) of this article.

(c) At sea and in ports other than Honduran and Continental U.S. Ports no work other than usual routine duties shall be performed on Sundays or Holidays.

(d) Holidays:

The following Holidays will be observed: January 1st, March 15th, April 14th, May 1st, September 15th, October 3rd, October 12th, December 25th, Holy Thursday, Good Friday, and Saturday of Holy Week.

(e) Stevedoring Cargo:

Any work performed by members of the crew in connection with the stevedoring of cargo, will be paid for at the overtime rate stipulated in paragraph (h) of this article.

(f) DRILLS:

Boat and fire drills and other emergency work performed for the safety of the ship, its passengers, its crew or cargo or for the salvaging or aiding of other vessels in distress including their crew, passengers and/or cargoes shall not be considered overtime no matter when or where performed.

(g) COMPUTATION OF OVERTIME:

Overtime shall be computed on the basis of half-hour periods, it being understood that any fraction of half-hour shall be considered a full half-hour.

[fol. 17] (h) OVERTIME RATE:

The overtime rate for all departments shall be ($1.00) one dollar per hour U. S. Currency or its equivalent in Lempiras or in the currency prevailing in the place of payment and the said overtime shall be paid in cash at the completion of each voyage.

(i) The Boatswain and/or Carpenter shall perform the usual routine soundings and inspections on Saturdays, Sundays and Holidays without the payment of overtime.

(j) It is mutually understood and agreed that a vessel shall not be considered in port while at anchor. Nevertheless, when the vessel is anchored on a Saturday afternoon, a Sunday or on any of the holidays stipulated in section (d) of this article crew members will be paid for work done in accordance with sections (a) and (b) of this same article.

17. The purpose of the contracting parties in signing this contract is to continue working in complete harmony and cooperation for their mutual benefit, and principally to continue fomenting the development of the Honduran Merchant Marine to the end that it may occupy its proper place in the international maritime commerce.

18. Both parties being fully aware of the unsettled world-wide conditions and being desirous of protecting the interests and providing for the welfare of the seamen employed by the Empresa Hondurena de Vapores, S. A., in the event that the vessels owned by the Company should during the life of agreement, operate under war

conditions, do agree that in that event the seaman employed on vessels operated by the Empresa Hondurena de Vapores, S. A., will be paid the identical bonuses percentage-wise and the identical compensation for death as a result of war hazard and or temporary and or permanent disability as a result of war hazard and loss of personal effects as are paid to seamen employed in the Merchant Marine of the United States.

During the period that any vessel of the Company is under charter to any agency of the United States Government, the members of the crew of such vessels, in lieu of the benefits mentioned in the paragraph above, shall be entitled to the bonuses and to the benefits for death, body injury, loss of personal effects and internment resulting from risk of war or war-like operations, as may during the term of such charter be provided with respect to the crews of vessels documented under the laws of the United States and under charter to any agency of the United States Government and during the period that the payment of such benefits are insured or assumed by the charterer, the Company shall be relieved of any and all liability to the members of the crew or their beneficiaries under the provisions of this agreement.

Whenever any of the foregoing contingencies should take place, the Empresa will notify the Sociedad of such occurrences.

19. TERM OF CONTRACT:

This contract shall become effective at 12:01 A. M. April 16, 1957, and shall remain in full force and effect until midnight of April 15, 1959, and shall be considered automatically renewed for an equal term and so on successively if before 30 days prior to its expiration date one of the contracting parties has not notified in writing the other party its decision to terminate the contract; it being expressly agreed and understood that the contract entered into between the same contracting parties on April 11, 1955, is hereby terminated as of midnight April 15, 1957.

[fol. 18] IN WITNESS WHEREOF, Mr. Francisco Cosenza Arevalo, in his character of President of the SOCIEDAD

Nacional de Marineros de Honduras and in accordance with the faculties vested in him by the by-laws of the said Sociedad in Chapter 111, Article 27, Paragraph (ch) and Mr. Joseph Felix Aycock in his character of President of the Empresa Hondurena de Vapores, S. A. duly authorized therefor, signed this contract before two witnesses, in the city of Puerto Cortes, Sectional District of Puerto Cortes, Department of Cortes on the 29th day of March nineteen hundred and fifty seven.

J. F. Aycock
President of the
"Empresa Hondurena de Vapores, S. A."

F. Cosenza
President of the
"Sociedad Nacional de Marineros de Honduras"

Efrain Alcantara
Witness

F. B. Acosta
Witness

[fol. 19] The undersigned Notary Public, with residence at the present time in the city of San Pedro Sula, D. D., Department of Cortes, and at present in this Port

CERTIFIES: That the signatures which read: "J. F. Aycock" and "F. Cosenza", appearing at the end of the Collective contract for Maritime Work, entered into between the EMPRESA HONDUREÑA DE VAPORES, S. A., and the SOCIEDAD NACIONAL DE MARINEROS DE HONDURAS, are authentic and have been placed thereunto in his presence by Messrs. JOSEPH FELIX AYCOCK and FRANCISCO COSENZA AREVALO, in their character of Presidents, respectively of the aforesaid societies, and that they are personally known to him: and HE FURTHER CERTIFIES: That the signatures which read "Efrain Alcantara" and "F. B. Acosta" and which likewise appear at the end of the aforesaid contract are authentic and have been placed thereunto in his presence by Messrs. Efrain Alcantara and Francisco B. Acosta whom he knows personally and who sign said document in their character of witnesses.

IN WITNESS WHEREOF he signs and seals these presents in Puerto Cortes, Sectional District of the same name, Department of Cortes, on the 29th day of March nineteen hundred and fifty seven.

.....

Guillermo Moncada
Notary

[fol. 20] EXHIBIT 2 TO COMPLAINT

(Translation)

MINISTRY OF STATE FOR LABOR AND SOCIAL WELFARE

CERTIFICATION

THE UNDERSIGNED SECRETARY OF THE MINISTRY OF STATE FOR LABOR AND SOCIAL WELFARE in the action initiated by virtue of the petition presented to this Ministry of State by Mr. Joseph Felix Aycock, in his capacity as President of the Empresa Hondureña de Vapores, S.A., CERTIFIES: the opinion and decision literally state:

"The undersigned Chief of the Legal Section of the Office of the Inspector General of Labor, in accordance with the preceding decision, hereby submits the following OPINION.—The Republic of Honduras is an Independent and Sovereign State with its own nationals and territory, legally established, subject to and obeying a Constitution and the laws and regulations derived therefrom and which in conjunction form the Honduran Judicial System. As a State which it is, it is Sovereign, a factor which is of extreme importance in International Law and which forms the fundamental basis for the Opinion which is herein expressed, for as there is no other judicial power of a higher hierarchy than that of Sovereignty, there exists only the self-imposed limitations of the individual States which gives a reason for the peaceful coexistence of these States within the Judicial System known as Public International Law. If this were not the case, it would be possible for the government of one nation, for example, to dictate unilaterally dispositions which could affect the sovereignty and jurisdiction of another state; which, in turn, and as reprisal, could dictate dispositions covering matters which legally pertain to the first and thereafter successively until the entire civilized world would be transformed into a state of chaos due to constant tensions and innumerable wars, depending upon the power of some and the weakness of others. Fortunately, man has found

the means of voluntarily imposing a limitation upon the Sovereignty of each State by means of international treaties, or simply by unilateral action under the existing laws. We have, therefore, Honduras, a civilized country, respectful of International Law which, in accordance with Article 11 of its Constitution has adopted and recognizes as its own the principles and practices of an international order which recognize the community of man and the sovereignty of nations and their desire for peace and universal democracy, and to such extent it would never presume to order the other Central American Republics to alter in any way their political status, the control over their people or their judicial institutions, or even to attempt to have their courts decide in any given manner matters over which they have jurisdiction, or even to attempt to take from the jurisdiction of these foreign courts matters which in accordance with their own jurisprudence, are wholly within their jurisdiction, and we could go on and on and mention many other instances of possible inferences in questions of International Jurisprudence which would only be limited by one's imagination. However, we repeat that man has found the solution to this problem because there exist internally laws which restrict the actions of each State, International Codes which resolve conflicts of law and finally International Conventions which proscribe the intervention of one State in the internal affairs of another, which condemn the [fol. 21] theory of rule by the strongest and raising to a very high plane the concepts of law and the peaceful solution of international controversies. Article 6 of the Constitution of the Republic of Honduras fixes the national territorial boundaries in such a detailed manner and conforms these with the decisions of arbitration commissions that the Honduran authorities charged with the enforcement of laws with regard to specific cases would never reach the extreme of usurping the rights and actions of other States by virtue of an error in political geography. The doctrine and conventions relating to private International Law, for example, the Bustamante Code, approved by the 6th Inter-American Conference at Havana, Cuba, in 1928, refers to the following classification

of laws. 'I. Those applying to persons by reason of their domicile or their nationality and following them even when they go to another country termed personal or of an internal public order; II. Those binding alike upon all persons residing in the territory, whether or not they are nationals termed *territorial, local or of an international public order;* III. Those applying only through the expression, interpretation, or presumption of the will of the parties or of one of them, termed voluntary or of a private order.' Private International Law recognizes among those laws which are classed as territorial the Political Constitutions and Labor Laws, in addition to criminal and administrative and procedural law; that is to say, these laws are applied equally to those who reside within the territory of the State in question without regard to nationality. This means that a worker or an employer domiciled in Honduras, even though they may be foreigners or have tried voluntarily to free themselves from the jurisdiction of the *territorial* laws of Honduras, cannot limit the celebration of a work contract to the laws of a foreign country. Much less can a foreign judicial body declare itself competent to consider a labor matter originating in Honduras, as we will demonstate further on. It is established, therefore, that the provisions of a constitutional or labor character, among others, have the nature of being territorial laws and obligate all persons residing in Honduras without regard, as is reasonable, to the personal laws of individuals, under which it would be possible to grant the application of certain foreign legal provisions within the national territory, for example, those relative to the civil status of persons. As we are actually concerned with the substantive aspects of the problem presented by the Empresa Hondureña de Vapores, S.A., we will refer to the Charter of the Organization of American States subscribed to generally by all of these countries and specifically by the United States of America and the Republic of Honduras on April 30, 1948, in the City of Bogotá, Republic of Colombia. In Article 5 of this Charter there is contained a reaffirmation of the principles by the American States and under paragraph b) of said Article they re-

affirm that '(b) International order consists essentially of respect for the personality, *sovereignty* and independence of States, *and the faithful fulfillment of obligations derived from treaties and other sources of international law.*' As an example of the limitation of the Rule by the Strong which distinguishes us today from those who lived in the dark ages of man, Article 6th of the Charter proclaims that 'States are juridically equal, enjoy equal rights and equal capacity to exercise these rights, and have equal duties. The rights of each State depend not upon its power to ensure the exercise thereof, but upon the mere fact of its existence as a person under international law.' Strengthening the above principle, Article 7 of the Charter imposes the following obligation: 'Every American State has the duty to respect the rights enjoyed by every other State in accordance with international [fol. 22] law', and in Article 8 the Charter states that 'The fundamental rights of States may not be impaired in any manner whatsoever.' We affirm that one of the fundamental rights of a modern state is its unrestricted rights with respect to its own legislative, administrative and judicial functions with respect to its own area and the validity of its laws. The above citations are enough to demonstrate the illegality of the action on the part of the National Labor Relations Board of the United States when it sought to exercise jurisdiction over a matter which is properly within the jurisdiction of Honduran Courts, in that without any logical reason whatever it ordered that the Empresa Hondureña de Vapores, S.A. recognize an American Maritime Union as the representatives of that Company for the negotiation and execution of a collective bargaining contract; however, we feel that it is our duty to study this matter further with respect to the Charter of Organization of American States and point out that its terms and conditions obligate all Nations of this Continent, whether they be large or small, strong or weak. We place specific emphasis on the following articles: 'Article 12. The jurisdiction of States within the limits of their national territory is exercised equally over all the inhabitants, whether nationals or aliens.' Article 15. 'No State or group of States has the right to intervene, di-

rectly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.' As you can see, we have now reached the question of jurisdiction. Would the Government of the United States recognize as being legal the action by a Judge of the Republic of Honduras which would tend to bring under his jurisdiction matter X which properly should fall within the jurisdiction of the Courts of the United States? If by the mere fact that there are Honduran seamen who serve on ships which sail under the flags of the United States would this give to the Government of Honduras jurisdiction over labor matters involving these seamen, and would the Government of the United States consider it as being legal, realizing that its labor laws are territorial in nature and as a result applicable to the last inch of United States territory and to the ships which fly its flag for the reason that these ships are an extension of its national territory? We think that the answer would be in the negative and therefore it is reasonable to assume that the Government of Honduras would also refuse to accept as valid any decision handed down by any Court of any foreign country which attempts to apply to persons having their domicile in Honduras and who in accordance with the classification of laws above cited are subject to the jurisdiction of its territorial laws. The Constitution of the Republic, which is the source of International Law, establishes in Article 122 the jurisdiction over labor matters and states that it shall have jurisdiction over all controversies which originate as a result of the relations between capital and labor and states clearly that the respective laws shall establish the norms of this jurisdiction and the agencies which shall be responsible for putting them into effect. The law has effectively established the jurisdiction over labor matters creating courts and tribunals necessary to mete out justice in labor matters. In the City of Puerto Cortes, situated in the Department of Cortes, which is a part of the national territory, there is a Labor Court and within its jurisdiction is the domicile of the Empresa Hondureña de

Vapores, S.A., as well as the domicile of the seamen who work for this Company. Therefore, any controversies which arise between these parties are subject in accordance with the provisions of the Constitution and the law, to said Labor Court. We take into consideration that the [fol. 23] ships of any nation actually constitute an extension of the national territory of that nation. We can show that the National Maritime Union of the United States under the provisions of the Labor Code in force in Honduras is not legally the representative of the workers of the Empresa Hondureña de Vapores, S.A., but we are not concerned with this matter, but merely wish to demonstrate, as we have demonstrated, the illegality of the resolution handed down by the National Labor Relations Board of the United States, based on the irrefutable argument that *it does not have jurisdiction over the matter which it has attempted to resolve*. As this 'Decision' stands, in the future the Government of the United States will have to recognize that all decisions handed down by the Courts or Tribunals of Honduras which involve conflicts between Honduran seamen on ships of the United States Merchant Marine shall be valid; this situation would merely be with respect to Honduras, for it is very easy to imagine that a like position could be taken by other countries stronger than Honduras and we feel certain that this would not be well received by the United States of America. The Bustamante Code, in Article 423, paragraph 3, establishes that 'Every civil or contentious administrative judgment rendered in one of the contracting States shall have force and may be executed in the others if it combines the following conditions: That the judgment *does not* conflict with the public policy or the public laws of the country in which its execution is sought.' The resolution handed down by the National Labor Relations Board of the United States referred to in the petition of the Empresa Hondureña de Vapores, is in conflict with the Constitutional, Labor and Procedural Law of Honduras, which are all a matter of Public Law. In conclusion, we have reached the following opinion with respect to the Petition filed by the Empresa Hondureña de Vapores and state as follows: 1. That in accordance with

the Labor Laws of Honduras a foreign Tribunal or agency cannot intervene in a labor matter which involves a Honduran shipping company and the seamen who work on its ships which fly the Honduran flag, as we consider that these ships are actually merely an extension of the national territory; 2. That no foreign union can represent the interests of seamen who work on ships sailing under the Honduran flag; 3. That any resolution or decision of a foreign tribunal or agency which conflicts with what has been expressed under 1 and 2 above, is null and void in accordance with the Honduran Constitutional, Labor and Procedural Law. Tegucigalpa, D. C., December 7, 1961. (Signed) ADALBERTO DISCUA R., Chief of the Legal Section of the Office of the Labor Inspector General.

"MINISTRY OF STATE FOR LABOR AND SOCIAL WELFARE. Tegucigalpa, Central District, December 8, 1961. I hereby approve in all parts the opinion handed down by the Legal Section of the Office of the Inspector General of Labor. Extend a certified copy to the interested parties. EXECUTED. OSCAR A. FLORES (Seal) Minister of State for Labor and Social Welfare. ANGEL LEVY CASTILLO—Seal of the Secretary's Office."

Extended in Tegucigalpa, Central District, the 8th day of December 1961.

(SEAL)

ANGEL LEVY CASTILLO
(SEAL) Secretary of the Ministry of Labor

Approved

/s/ Oscar A. Flores
Minister of Labor

[fol. 24] EXHIBIT 3 TO COMPLAINT

134 NLRB No. 25 D-2594

New York, N. Y.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 2-RC-10379

UNITED FRUIT COMPANY

and

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO

Decision and Direction of Election.

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Jacob Lazarus, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record of this case,[1] the Board finds:

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[1] On May 31, 1960, the Board held a consolidated hearing for purposes of oral argument in *West India Fruit and Steamship Company, Inc.*, 130 NLRB No. 46, *Peninsular & Occidental Steamship Company*, 132 NLRB No. 2, and *Eastern Shipping Corporation*, 132 NLRB No. 72, on certain issues concerning the jurisdiction of the Act over ships flying the flags of nations other than the United States and concerning policy considerations involved in the Board's assertion of jurisdiction over such vessels. Similar issues are raised in this proceeding. Thus, as it appeared that United Fruit Company, the Petitioner, and Sociedad Nacional De Marinos Honduras, a Honduran organization, might have a substantial interest in the outcome of the *West India* and other cases referred to above, they were invited to participate as *amicus curiae* in the oral argument. Only the Petitioner accepted the invitation and appeared by counsel at the hearing. See, *West India Fruit and Steamship Company, supra*, pp. 1-2, footnote 5.

As set forth in our decision in the *West India* case, *supra*, p. 2, fn. 4, the Attorney General of the United States was permitted

1. The Petitioner seeks a single fleet-wide unit of all unlicensed seamen employed aboard certain Honduran flag vessels which it alleges are beneficially owned and controlled by the United Fruit Company, here called UFCO, through its wholly owned foreign subsidiaries, Empresa Hondurena de Vapores, S.A.[2] and Balboa Shipping Corporation. UFCO contends that it is not, as alleged, the employer of the seamen involved and neither owns nor, as a time-charterer, operates the ships covered by the petition. Both UFCO and Empresa argue basically that as Empresa is a foreign corporation, is the employer of the seamen, and is engaged in its own business of operating and chartering the vessels, and as the vessels are of Honduran registry and the seamen of foreign nationality, the maritime operations involved are not within the jurisdiction of the Labor Act. Thus, the issue raised [fol. 25] here concerns not only the effect upon the Act's jurisdiction of the foreign aspects adhering to Empresa's maritime operations, but also a determination of the relationship of Empresa and its operations to UFCO and its shipping trade.

As for the companies' arguments based upon the flag law and other international law doctrine and upon certain treaties and conventions between the United States and Honduras, such matters were dealt with at length in the Board's decision in *West India*. It was there concluded that the presence of such matters does not necessarily preclude the Act's coverage of a given maritime operation.[3]

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to intervene in this and the other three cases referred to above and in his brief, filed on November 18, 1960, presented on behalf of the Department of State and Department of Defense certain considerations of international law and national defense policy bearing upon issues common to the four cases.

[2] Empresa Hondurena de Vapores, a Honduran Corporation, moved to intervene on the ground that it was the employer of the employees covered by the petition. Empresa was, without opposition, permitted to intervene at the hearing and has participated fully at all stages of this proceeding.

[3] The treaty and consular conventions with Honduras are substantially the same as those with Liberia considered in the *West India* decision at pp. 19-21.

Similarly in the *Peninsular and Occidental*[4] and in the *Eastern Shipping*[5] cases it was held that the foreign incorporation of the legal owner and operator of a vessel and apparent employer of its crew did not alone take the vessel beyond the reach of the Act's jurisdiction.

However, none of these cases supports the proposition, in effect urged upon us here by the Petitioner, that underlying stock or other beneficial ownership and, thus, ultimate control of a foreign corporation and its operations by domestic United States interests necessarily bring the foreign corporation or its operations within the coverage of the Act. We do not read the Act as necessarily following United States investments abroad. It is the commerce of this nation, not of foreign nations, with which the Act is concerned. Also we are aware that international seaborne commerce will by its very nature involve insofar as this nation is concerned trade or transportation between foreign nations and a State. Nothing in the Act or relevant cases suggests, however, that all seaborne commerce reaching our ports on regular runs or sporadically is within the Act's coverage irrespective of other aspects of the operations.[6] In following the Supreme Court's *Lauritzen* decision,[7] the Board has pointed out that the test of jurisdiction given commerce literally within Section 2(6) is whether there exist substantial contacts between the "foreign" maritime operation and important United States interests.[8] Rather the problem is one of evaluating the many aspects of the operation and determining whether or not the shipping involved is essentially that of this nation and not that of a foreign nation which the exigencies of international trade have brought in contact with

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[4] 132 NLRB No. 1, at 5.

[5] 132 NLRB No. 72, at 5-6.

[6] See, *Benz* v. *Compania Naviera Hidalgo, S. A.*, 353 U.S. 138 (1957); also, *Lauritzen* v. *Larsen*, 345 U.S. 571, 581 (1952).

[7] *Lauritzen* v. *Larsen*, *supra*.

[8] E.g., *West India*, *supra*, p. 15; *Eastern Shipping Corporation*, *supra*, at 2.

[9] *West India*, *supra*, 15; *Eastern Shipping Corporation*, *supra*, p. 6.

the United States.[10] Such a view clearly lends itself to the result that a foreign maritime operation can retain its essentially foreign nature and remain the commerce of a foreign nation outside the coverage of the Act despite underlying United States interests and certain commercial contacts with this country. At the same time, this view looks beyond the formal foreign aspects to determine if the maritime operation is in fact one primarily based in and operating out of the United States or essentially an adjunct of a domestic corporation's operations in the [fol. 26] international trade of the United States, and, thus is the shipping of this nation and, consequently, covered by the Act. It follows, as we emphasized in our *West India* decision (at pages 21 and 31) and as we re-emphasize here, that the particular flag or nationality of the vessels involved, as such, plays no role in our determinations. Whether the flag or nationality be from our own hemisphere or across the seas, the controlling criteria are the same.

It is in the light of these considerations that we must approach the facts and issues before us in deciding the jurisdictional question. UFCO is a New Jersey corporation with its principal place of business at Boston, Massachusetts. Of its approximately 8.7 million outstanding shares of stock, over 8.5 million are owned by citizens of the United States. Its business interests extend world-wide and involve a rather diverse group of activities. However, it is primarily concerned with the raising of bananas, sugar, cacao and other tropical produce and with their transportation to market and sale. The bulk of its trade is between Central and South American locations and United States ports, and the value of its imports into this country exceed one million dollars annually, and are carried in large part on ships either owned or chartered by UFCO, including those subject of the present petition.

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[10] Thus, in both the *Eastern Shipping* case at p. 5 and in *Hamilton Bros.*, 133 NLRB No. 85, p. 3, the Board noted in finding the Act applied that the U. S. contacts present were not just the result of the foreign seaborne trade of a truly foreign venture.

Though it is an operating company, UFCO also to a large extent carries out its operations through some fifty or sixty subsidiaries, many of which are foreign corporations such as Empresa, the subsidiary involved in this proceeding. The primary purpose of UFCO's operating through subsidiaries is to achieve, as its vice-president explained in his testimony, a decentralized control of the companies' many activities in which the subsidiaries, more or less specializing in particular types of undertakings, deal with the day-to-day problems of their operations while over-all policy and development control resides in the parent company. The extent and nature of that control is the subject of sharp disagreement between the Petitioner and the companies. But the record shows that, though day-to-day operations are in fact handled by the subsidiaries themselves, long-range plans concerning expansion, contraction or other changes in the operation of subsidiaries are generally controlled by UFCO and its decision with respect to such matters is based not so much upon the needs or advancement of the subsidiaries as independent corporations, but rather upon the needs and planned development of UFCO's overall business in the production, transportation and sale of tropical produce.

Empresa is, as noted, one of UFCO's wholly-owned subsidiaries. It was organized under the laws of Honduras in 1941 by UFCO which supplied the capital for the venture. Empresa's officers are elected by its directors who are in turn elected by the sole stockholder, UFCO. There are, however, no interlocking directors with, or officers common to, Empresa and its parent. Furthermore, Empresa maintains all its own records, holds real estate in its own name, and otherwise appears to function as a distinct corporate entity. It is engaged in the business of owning and operating vessels registered under the laws of Honduras. However, it does not carry passengers or cargo on its own account. Rather, since its incorporation it has time chartered all its vessels and its income from its maritime operations, which exceed $400,000 annually, is derived wholly from the charter fees. But Empresa does not, as the record shows, hold itself out to the shipping world generally as being engaged in the business of chartering

vessels. On the contrary, since its formation its business [fol. 27] has been limited with but a few possible exceptions [11] to chartering its vessels to UFCO, and the seventeen ships under its control at the time of the hearing and which are the subject of the petition [12] were so chartered.

As the owner and operator of the vessels under time charter, Empresa must provide ships that are fully equipped and ready to put to sea. Thus, it is responsible not only for the physical condition of the ships [13] and for provisioning them,[14] except for fuel, but also for hiring the officers and crews [15] and handling all matters concern-

[11] It was stated in the record by several Company witnesses that Empresa chartered its vessels to UFCO and no other company. However, an exhibit shows that certain of the vessels had, on relatively rare occasions, been under charter to companies unrelated to UFCO; but, whether Empresa itself had so chartered the vessels or whether they were in fact rechartered by UFCO to the stranger companies does not appear. In either event, it remains clear that Empresa does not look to the general shipping market but rather to UFCO for the chartering of its vessels.

[12] Empresa owned 14 of these vessels. Three were owned by Balboa Shipping Corporation, a Panamanian Corporation wholly owned by UFCO. Empresa is the managing agent of such vessels which, like its own ships, fly the Honduran flag. Balboa is not at this time directly involved with the operation of its three vessels which are, for all practical purposes, as fully under Empresa's control as are its own vessels. As Empresa's control over the vessels of Balboa appears to be the same as that over its own vessels, it is unnecessary for the purposes of this decision to distinguish between the two groups of vessels. We note, moreover, that it is not contended that jurisdiction over Balboa's vessels turns on factors other than those also applicable to Empresa and its vessels.

[13] Empresa is responsible not only for day-to-day upkeep of the vessels but also for having the ships drydocked and repaired. Both are usually done in the United States. However, betterments for vessels or the purchase and scrapping of vessels are matters usually falling within the over-all policy control of UFCO.

[14] Supplies are purchased both in foreign nations and the United States. Most of what it buys in this country is purchased from Maratrop Trading Corporation, a wholly owned UFCO subsidiary.

[15] The crews are hired in Honduras, are composed almost wholly of citizens of that country, and sign Honduran shipping articles

ing terms and conditions of employment including payment of wages and discipline of the personnel.[16] There is nothing in the record to suggest that Empresa does not in fact carry out these typical responsibilities of the owner of a vessel under a time charter.

UFCO, as the time charterer of the vessels, determines what voyages they shall make, their ports of call, their length of stay in various ports, and what cargoes they shall carry. In exercising its control, UFCO deals directly with the captain of the vessel involved. If it is dissatisfied with the handling of a vessel by its officers or crew or with its mechanical or other condition, it directs its complaints directly to Empresa, which is responsible for making any necessary changes. The ships are used, for the most part, to carry produce of UFCO's Latin American operations,[17] and on any given trip may call at ports in various Central and South American countries including those of Honduras. As the bulk of the trade is between such countries and the United States, the vessels regularly call at the ports of this nation. On their return trips to Latin America the ships carry cargo for various UFCO subsidiaries and also general cargo for shippers and consignees outside the UFCO organization.

[fol. 28] The record further shows that the Empresa vessels are wholly integrated in UFCO shipping operations. Thus, UFCO bareboat charters from one of its U. S. subsidiaries or owns outright a number of cargo ships registered under the laws of the United States. These ships, like Empresa's, are, under the jurisdiction of UFCO's Marine Division, and the two groups of vessels are used interchangeably, carrying the same types of cargos and calling at the same ports, both domestic and foreign. In assigning a vessel to a particular run, the determination as to which vessel to use is based on its availability, size and speed, not on its ownership or flag.

The facts, outlined above, show that the maritime operations before us come literally within the Act's definition of

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[16] Empresa, as part of its control over personnel, has bargained with a Honduran organization as the representative of the crews of its vessels. See below, fn. 22.

[17] Some, if not all, of the ships also carry passengers.

commerce as they encompass in large part, transportation and trade between foreign countries and States of this nation. They further demonstrate that the relationship between UFCO and Empresa is one in which the affairs of the subsidiary are designed essentially to further the shipping operations of the parent and not one in which Empresa is considered an independent undertaking whose success or failure is gauged by its role in the open market. Supporting this conclusion are, *inter alia*, (1) that Empresa's capital expenditures and other substantial changes in operations are tied to UFCO's sea-going transportation needs, both present and projected, (2) that Empresa, with but few possible exceptions, time-charters its vessels to UFCO only and does not look to the open market for business, and (3) that Empresa's vessels are utilized by UFCO as an integral and necessary part of its fleet of vessels and not chartered as an alternative to acquiring vessels elsewhere or only to meet particular contingencies that may arise.[18] Thus, the record shows that Empresa's maritime operations are a part of a single integrated maritime operation under the continuous, direct control and either direct or ultimate ownership of UFCO and are an essential part of a seagoing enterprise located in and directed from the United States and engaged in the commerce of this nation as described in Section 2(6) of the Act. It is also evident, and we find, that Empresa through its immediate authority and control over hiring and other terms and conditions of employment and UFCO through its control of Empresa and of the vessels and their operations are joint employers of the employees covered by the petition.[19]

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[18] In the situation where it or its subsidiaries' vessels cannot meet its needs, UFCO charters vessels from outside its family of companies. Also, it might be noted here that, in its annual reports, UFCO refers to the vessels involved in this proceeding as its own vessels and notes that certain vessels for foreign flag operations were built to its specifications, and so forth. There is nothing in such reports to indicate that UFCO considers the foreign flag vessels to be other than its own or to be otherwise than completely under its control.

[19] In so finding, we are not holding that a time charterer of a vessel is necessarily a joint employer of the vessel's crew irre-

We find, further, under the circumstances here that the maritime operations before us possess those substantial United States contracts which, under our decision in West India,[20] bring them within the jurisdictional coverage of the Act, despite the foreign registry of the vessels, [fol. 29] Empresa's foreign incorporation, and the other foreign aspects present.[21] Accordingly, we conclude that Empresa and UFCO and their maritime operations subject of the petition are in, and affect, commerce within the meaning of Sections 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding. Thus, the companies' motions to dismiss on jurisdictional grounds are denied.

2. The labor organizations involved claim to represent certain employees of the Employers.[22]

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spective of the other attendant facts.

As Balboa Shipping Corporation does not operate its three vessels time chartered to UFCO and does not hire or otherwise deal with the seamen on such vessels or affect their terms and conditions of employment and as Empresa has, as noted, authority over such matters, Balboa is not under the present arrangement an employer of the seamen on its vessels.

[20] 130 NLRB No. 46, pg. 14-15. Clearly, the United States contacts derive from the fact that the maritime operations involved are those of a domestic corporation. They are not the result of the international operations of a truly independent foreign maritime venture.

[21] See, also, *Peninsular & Occidental Steamship Co., supra; Eastern Shipping Corporation, supra;* and *Hamilton Bros., Inc., supra.*

[22] Following the close of the hearing in this case, Sindicato Maritimo Naccional De Honduras "Sindimar" sought to intervene in this proceeding on the basis of a card showing of interest. The Petitioner contends the request for intervention was not timely. We disagree, for the cards submitted in support of intervention were dated prior to the time of the close of the hearing. As we find that "Sindimar" is a labor organization, the motion to intervene is hereby granted. See, *Hamilton Bros. Inc.*, 133 NLRB No. . Sociedad Naccional De Marineros De Honduras was listed in the petition as the bargaining representative of the employees in the alleged appropriate unit and the record shows that, at the time of the hearing, a contract between Sociedad Naccional and Empresa covering the employees was then in effect. Copies of the petition, of the notice of hearing, and other formal

3. A question affecting commerce exists concerning the representation of certain employees of the Employers within Section 9(c)(1) and Section 2(6) and (7) of the Act.[23]

4. The following employees of the joint employers constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act: all seamen employed upon the vessels owned or managed by Empresa Hondurena De Vapores, S.A., and jointly operated by the Employers, excluding guards, masters, other licensed officers, and all other supervisors.[24]

[fol. 30] DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The Regional Director for the Region where this case was heard shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because

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papers were not served on Sociedad Naccional. However, on June 7, 1961, the Board issued a notice, served on the parties and Sociedad Naccional, in which, *inter alia*, it accorded that organization a right to intervene and state its position on the issues by filing within 25 days a "Statement of Intervention" and a brief. As Sociedad Naccional did not reply to the notice, we conclude it is not interested in being a party to this proceeding, and we therefore do not consider it to be one.

[23] We find contrary to the contention of Empresa that its contract with Sociedad Naccional in effect at the time the petition was filed but expiring in April 1961 is not a bar to this proceeding, assuming it would otherwise be so effective because the decision herein is issuing after the expiration date of that contract. See: *St. Louis Independent Packing Company*, 122 NLRB 887, 889.

[24] The unit appears substantially as requested by the Petitioner. Empresa and UFCO did not contend the unit is inappropriate in either scope or composition, but object to the unit on the grounds considered above and found without merit, i.e., that UFCO is not an employer of the employees and that the Board is without jurisdiction in this case.

they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the elegibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by National Maritimes Union of America, AFL-CIO; or by Sindicato Maritimo Naccional De Honduras, "Sindimar;" or by neither.

Dated, Washington, D. C.

FRANK W. MCCULLOCH, Chairman
BOYD LEEDOM, Member
JOHN H. FANNING, Member
GERALD A. BROWN, Member
NATIONAL LABOR RELATIONS BOARD

(SEAL)

PHILIP RAY RODGERS, MEMBER, dissenting:

For the reasons stated in my dissenting opinions in *West India Fruit and Steamship Company*, 130 NLRB No. 46, and *Hamilton Bros., Inc.*, 133 NLRB No. 85, I would dismiss the petition herein.

Dated, Washington, D. C.

PHILIP RAY RODGERS, Member
NATIONAL LABOR RELATIONS BOARD

[fol. 31] EXHIBIT 4 TO COMPLAINT

No. 109

November 29, 1961

Excellency:

With special instructions of my Government, I have the honor to call Your Excellency's attention to the decision rendered by the National Labor Relations Board, an Agency of the Government of the United States of America, in the city of Washington, in the case No. 2-RC-10379, entitled "United Fruit Company and National Maritime Union of America, AFL-CIO," dated November 15, 1961.

In this case the National Maritime Union of America, an American labor organization operating in this country, filed a petition with the National Labor Relations Board, with the final purpose to represent the unlicensed seamen working on vessels owned and operated by "Empresa Hondureña de Vapores, S.A.", a Honduran corporation recognized by Decree No. 1383 issued by the Ministry of Interior, Justice, Sanitation and Public Welfare of Honduras, on March 28, 1941, with principal office at Puerto Cortés, Republic of Honduras. The National Labor Relations Board decided favorable the petition of said Union.

My Government has taken notice of this decision with [fol. 32] very great concern, because the Board has paid no consideration to the fact that all those vessels fly the Honduran flag and are registered in the Honduras registry, and has also ignored the Treaty of Friendship, Commerce and Consular Rights between Honduras and United States, signed at Tegucigalpa, Honduras, on December 7, 1927.

Article X of the Treaty provides that merchant vessels and other privately owned vessels under the flag of either

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His Excellency
Dean Rusk,
The Secretary of State,
WASHINGTON, D. C.

of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown.

The National Labor Relations Board by asserting jurisdiction over the Honduran seamen aboard vessels carrying the Honduran flag has violated this provision that considers as vessels of Honduras those flying its flag.

It has also violated Article XXII of said Treaty which reads in part: "A Consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in case, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have [fol. 33] jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided the local laws so permit".

The Articles X and XXII of said Treaty are very clear and there is not doubt that wages and contracts are matters dealing with internal order of the vessels, and are therefore subject exclusively to the laws of the State of registry and flag.

This decision has also ignored the following facts that were alleged during the proceeding: that the seamen employed by the Empresa Hondureña de Vapores, S.A. on its vessels are Honduran nationals and citizens of Honduras, hired in Honduras, with domicile in that country; that the seamen and the other employees of Empresa Hondureña de Vapores are subject to the laws of Honduras, and under the jurisdiction of the Honduras labor authorities; that the vessels owned and operated by Empresa Hondureña de Vapores, S.A., as well as their crews are subject to the Merchant Marine Law of Honduras; that those vessels regularly carry tonnage to and from Honduras and that said Empresa according to Honduras law is required to pay substantial incomes and other taxes to Honduras; that said Empresa Hondureña

de Vapores, S.A. is the sole employer of the unlicensed seamen working on its vessels and that the United Fruit Company, an American Corporation, has nothing to do in negotiating collective bargaining with Sociedad de Marineros de Honduras, a labor union representing the unlicensed seamen; that the United Fruit Company has nothing to do with the firing, promotions, assignment, discipline and other elements of control over the seamen; and that for 19 years since the inception of Empresa [fol. 34] Hondureña de Vapores, S.A., in 1941, said Empresa has negociated every collective bargaining agreement with the Honduran union, including the labor contract presently in existence.

I want to inform Your Excellency the Secretary of State that according to the Labor Law of Honduras "Código de Trabajo de Honduras", Honduras has exclusive jurisdiction over the relations of employers and employees working in its territory and in its ships flying its flag. This jurisdiction can not be renounced and the Honduras Government can never accept that a foreign Union like the National Maritime Union of America or any other represent the seamen of Honduras that work on vessels of Honduran flag. According to our Labor laws those seamen are represented by a Honduras Union properly established in that country and regulated by the National Labor Laws.

It is a well established principle of International Law that a vessel is subject exclusively to the law of the State of registry and whose flag it flies regardless of ownership and accordingly a domestic statute should never be construed to violate binding and effective principles of international law.

It is a fact that the American labor laws has been construed so as to limit its application to seamen on American flag vessel over which Congressional power is undoubted.

International Law recognizes that every State determines the nationality of vessels flying its flag through its domestic registration laws and that registration of vessels of foreign ownership may be permitted, and International Law recognizes the flag and registry of such vessels with

[fol. 35] the same force as that of any other vessel of the same flag and registry.

It also recognized that a vessel on the high seas and in a foreign port is subject to the exclusive jurisdiction of the State of registry apart from powers not relevant here, that every State has over foreign vessels in its waters.

I am perfectly aware that His Excellency the Secretary of State is well acquainted with all these principles, nevertheless I consider that in this occasion I should point out said principles.

In view of the Above considerations, and on behalf of my Government, with much regret, I want to protest, respectfully, but firmly against said decision of the National Labor Relations Board.

In taking this action, my Government, knowing that Your Excellency's Government is so deeply interested in the fulfillment of the international treaties, hopes that Your Excellency will take the appropriate measures to remedy this situation.

I avail myself of this opportunity to renew to Your Excellency, the assurances of my highest consideration.

CELEO DAVILA
Ambassador of Honduras.

[fol. 36] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION—Dec. 16, 1961

Plaintiff, Sociedad Nacional de Marineros de Honduras, moves the Court to enter a temporary restraining order and injunction in accordance with the attached Order as prayed for in the verified Complaint.

RHYNE & RHYNE

By /s/ Herzel H. E. Plaine
HERZEL H. E. PLAINE
400 Hill Building
Washington, D. C.

Attorneys for Plaintiff

December 16, 1961

[fol. 37] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

TEMPORARY RESTRAINING ORDER—Dec. 16, 1961

It appearing to the Court from the verified Complaint filed in this proceeding by Sociedad Nacional de Marineros de Honduras, plaintiff, that the holding of the representation election on and after December 17, 1961, pursuant to the defendant National Labor Relations Board's decision in Case No. 2-RC-10739, prior to the determination of the legal issues which have been presented by plaintiff in this proceeding, will result in irreparable and incalculable injury to plaintiff;

It is therefore on motion of plaintiff, through their counsel,

ORDERED that defendant National Labor Relations Board and its agents be hereby prohibited from conducting an election among the members of plaintiff, this Order to be continued for the period of ten (10) days after the service of this Order on the defendants, unless within that time this Temporary Restraining Order is extended for good cause, and that the matter be set down for hearing on the 20th day of December 1961, at 10 A.M. in the United States Courthouse, District of Columbia.

[fol. 38] Provided, however, that this Order shall not become effective unless and until plaintiff files with the Court corporate security in the amount of $500.00 or cash or personal bond of plaintiff's attorney.

/s/ R. B. Keech
Judge

Dated this 16th day of December 1961, 12:07 p.m.
Washington, D. C.

/s/ R. B. Keech, J.

[fol. 39] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF DEFENDANTS TO DISMISS THE COMPLAINT—
Filed Dec. 19, 1961

Defendants, by their attorneys, move that the complaint herein be dismissed and that plaintiff's request for an injunction be denied for the following reasons:

1. This Court lacks jurisdiction over the subject matter of the action.
2. The complaint fails to state a case warranting equitable relief.
3. The complaint fails to state a cause of action.

WHEREFORE, it is respectfully requested that the complaint be dismissed and that plaintiff's request for injunctive relief be denied.

/s/ Marcel Mallet-Prevost
MARCEL MALLET-PREVOST
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.,
this 19th day of December, 1961.

[fol. 39a] CERTIFICATE OF SERVICE
(omitted in Printing)

[fol. 40] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER CONTINUING TEMPORARY RESTRAINING ORDER—
Dec. 21, 1961

This case came on to be heard on December 20, 1961 upon the motion of plaintiff for preliminary injunction and other relief on the verified complaint, and upon the motion of the defendants to dismiss the complaint. After argument by counsel for both sides in open court and good cause appearing to the Court that the temporary restraining order made in the case on December 16, 1961 at 12:07 P.M. by Hon. Richmond B. Keech, United States District Judge for the District of Columbia should be continued pending the Court's decision on the above motions,

It is therefore on motion of plaintiff

ORDERED that the defendants comprising the National Labor Relations Board and its agents and employes be and are hereby restrained and enjoined from conducting an election among the members of plaintiff (as heretofore directed by the Board's decision in Case No. 2-RC-10379) until the further Order of this Court on the above motion of plaintiff for preliminary injunction and upon the motion of defendants to dismiss said complaint.

This Order shall become effective immediately, the plaintiff having filed with the Court on December 16, 1961 security in the amount of $500.

/s/ Alexander Holtzoff
ALEXANDER HOLTZOFF, Judge

Dated: December 21, 1961

Approved as to form:

/s/ Norton J. Come
Counsel for Defendants
National Labor Relations Board

[fol. 41] DEPARTMENT OF JUSTICE
WASHINGTON

January 10, 1962

Honorable Alexander Holtzoff
United States District Judge
United States Courthouse
Washington 1, D. C.

Re: Sociedad National de Marineros
de Honduras v. McCulloch, et al.
Civil Action No. 4020-61

Dear Judge Holtzoff:

As a result of your inquiry I have sought to ascertain the views of the Department of State with respect to the Honduran Note of November 29, 1961 attached to the complaint in the above-entitled action. The Department of State informs me that, although the Department does not support all the statements in the Honduran Note, it agrees with the conclusion that jurisdiction of the National Labor Relations Board should not attach in this case.

We are sending copies of this letter to the counsel of record.

Sincerely yours,

/s/ William H. Orrick, Jr.
WILLIAM H. ORRICK, JR.
[fol. 41a] Assistant Attorney General

cc: Herzel H. E. Plaine, Esq.
Rhyne and Rhyne
400 Hill Building
Washington 6, D. C.

Norton J. Come, Esq.
Assistant General Counsel
National Labor Relations Board
Washington 25, D. C.

H. Howard Ostrin, Esq.
Cooper, Ostrin and Devarco
655 Madison Avenue
New York, New York

[fol. 42] [File Endorsement Omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4020-61

SOCIEDAD NACIONAL DE MARINEROS DE HONDURAS,
PLAINTIFF

v.

FRANK W. McCULLOCH, Chairman, and PHILIP RAY RODGERS, BOYD LEEDOM, JOHN H. FANNING, and GERALD A. BROWN, Members, NATIONAL LABOR RELATIONS BOARD, DEFENDANTS

OPINION—Jan. 18, 1962

Harzel H. E. Plaine, Charles S. Rhyne and Brice W. Rhyne, all of Washington, D. C., for the plaintiff.

Stuart Rothman, General Counsel; Marcel Mallet-Prevost and Norton J. Cone, Assistants General Counsel, for the National Labor Relations Board, of Washington, D. C. for the defendants.

H. Howard Ostrin, of New York, for intervenor National Maritime Union of America, AFL-CIO.

The question presented in this case is whether the National Labor Relations Board has authority to order that an election for the designation of representatives for the purposes of collective bargaining, be held among foreign seamen employed on foreign merchant ships that have occasion to visit American ports and that are owned [fol. 43] by a foreign corporation that is a subsidiary of an American corporation.

The National Labor Relations Board, on November 15, 1961, rendered a decision and issued a direction that an election be conducted among seamen employed on certain vessels flying the flag of Honduras and owned by a Hon-

duran corporation, the name of which is Empresa Hondurena de Vapores, S. A., generally known as Empresa, and which is a subsidiary of the United Fruit Company, an American corporation. The purpose of the election was to determine whether these seamen desired to be represented for purposes of collective bargaining by the National Maritime Union of America AFL-CIO, or by a Honduran labor union briefly known as "Sindimar", or by neither. The plaintiff, Sociedad Nacional de Marineros de Honduras, is a Honduran labor union and the bargaining agent of these seamen under the laws of Honduras. The name of the plaintiff was not to be placed on the ballot at the prospective election.

On December 16, 1961 the plaintiff brought this action against the members of the Board to enjoin and restrain them from conducting the election on the ground that in ordering it, the Board had exceeded its legal authority. A temporary restraining order was issued on the same day. A hearing was held on December 20, 1961. The National Maritime Union of America, AFL-CIO, was granted leave to intervene as a defendant, since it had been a party to the proceeding before the Board. A motion for a preliminary injunction and a motion by the defendants to dismiss the complaint for failure to state a [fol. 44] claim upon which relief can be granted were heard at length. A decision on these two motions was reserved in order to accord to the Department of Justice an opportunity to submit a statement as to its attitude and as to the position of the Department of State concerning the matter.[1]

The pertinent facts may be summarized as follows. Empresa is a corporation organized under the laws of Honduras, where it maintains its principal office and place of business. It owns and operates a fleet of seagoing vessels, which are registered under the laws of Honduras and fly the flag of that country. The crews of these ships are composed entirely of citizens of Honduras, with the

[1] The complaint is verified on oath and consequently is treated as an affidavit for the purpose of the motion for a preliminary injunction. No answering affidavits have been filed, although memoranda and briefs in opposition have been submitted.

exception of one person, who is a British subject. All of the seamen are members of a Honduran labor union, which is the plaintiff in this action, and which is briefly known as Sociedad. They were hired in Honduras under shipping articles executed in that country. Sociedad is recognized by the Government of Honduras as the sole collective bargaining agent of these seamen. Collective bargaining agreements are in effect between Empresa and Sociedad. Empresa is a subsidiary of United Fruit Company, a New Jersey corporation. The ships in question make voyages and carry freight between Central and South American ports, as well as between Central and South American ports and ports of the United States.

[fol. 45] On November 13, 1959, the National Maritime Union of America, AFL-CIO, filed a petition with the National Labor Relations Board, seeking to represent as a single unit all unlicensed seamen employed on ships owned by various subsidiaries of the United Fruit Company, including Empresa. Statutory authority for maintaining such a proceeding is found in 29 U.S.C. §159(c). The Union claimed that it represented a number of these employees. It does not appear whether the activity of the American Union was instigated by any of the seamen, or whether the Union was interjecting itself on its own initiative.

A series of hearings were conducted before an Examiner and the matter was then considered by the Board. Two years later, on November 15, 1961, the Board rendered a decision, in effect, granting the prayer of the petition and ordering an election, as has already been stated. The comprehensive and exhaustive opinion of the Board was substantially predicated on the propositions that the flag or nationality of the vessels should play no role in its determination; that the ships were actually controlled by United Fruit Company as a charterer; that the bulk of the trade conducted by the ships was between Central and South American countries and the United States; and that, consequently, this shipping was essentially that of this nation, and an adjunct of the operations of a domestic corporation in international trade of the United States. It was contemplated that the balloting would take place in

part on board each ship when it visited an American port, [fol. 46] and in part by mail, i.e. "absentee voting".

Honorable Celeo Davila, Ambassador of Honduras, promptly submitted a formal written protest, dated November 29, 1961, against the decision of the Board, in which he courteously but firmly called attention to the fact that a treaty between Honduras and the United States, signed on November 7, 1927, provided that merchant vessels under the flag of either of the contracting parties, should be deemed to be the vessels of the party whose flag they fly, both within the territorial waters of the other party and on the high seas. He also called attention to some of the other facts that have already been summarized and to certain principles of international law.

At the argument of the motions before this Court, a representative of the Department of Justice was present as an observer. The Court invited him to submit a statement of the views of the Government as to the merits of the Honduran note, and time was accorded for that purpose. Subsequently this Court received a formal communication from Honorable William H. Orrick, Jr., Assistant Attorney General, dated January 10, 1962, the pertinent portions of which read as follows:

> "The Department of State informs me that although the Department does not support all the statements in the Honduran Note, it agrees with the conclusion that jurisdiction of the National Labor Relations Board should not attach in this case.
>
> "We are sending copies of this letter to the counsel of record."

[fol. 47] Counsel for the National Labor Relations Board responded by a letter dated January 12, 1962, in which he took issue with the Department of Justice and the Department of State, and adhered to his original position that the Board had acted within the scope of its authority.

This disagreement between counsel for various agencies of the Government complicates the problem before the Court and requires more elaborate and exhaustive discussion than might otherwise be needed. The Attorney General, as the chief legal officer of the Government,

through his representatives, indicates that the Department of State is of the opinion that the jurisdiction of the National Labor Relations Board should not attach in this case. It is a reasonable inference that in transmitting the views of the Department of State, the Department of Justice was, in effect, approving or concurring in them. On the other hand, counsel for the National Labor Relations Board, which theoretically is also an agency of the Executive branch of the Government, strikes a dissonant note and seeks to uphold the jurisdiction of the Board. Ordinarily, the Attorney General, through members of his staff, or through the United States Attorney, appears in behalf of the Government. If there are any differences of opinion between Government agencies, they are generally adjusted intramurally, and the definitive position of the Government is presented to the Courts by the Attorney General through his representatives.[2]

[fol. 48] The anomalous situation presented in the instant case gives rise to some reflections on an interesting and significant development that in recent years has gradually taken place in the fundamental political institutions of this country. It is, of course, elementary that the Founding Fathers contemplated a tripartite division of the Federal Government, consisting of three coordinate branches. Being both profound scholars and practical realists, they derived their ideas in part from political philosophers, principally Montesquieu, and in part from their own actual experience. The advent of the administrative process, which was almost unknown in Anglo-American jurisprudence at the time of the Constitutional Convention, but which has been necessitated by modern social and economic developments, has affected this tripartite division. At times the administrative process is employed by Executive departments and agencies, such as the Department of the Interior, the Department of

[2] E.g. *St. Regis Paper Co.* v. *United States*, decided by the Supreme Court on December 11, 1961 (not yet reported). It is stated on page 8 of the slip opinion that the Solicitor General pointed out that the Government agencies were at loggerheads on the problem presented to the Court, but that he had concluded "on balance" to present a specific view.

Agriculture, the Department of Health, Education and Welfare, and others. It is also applied by regulatory Boards and Commissions. Beginning with the Interstate Commerce Commission, which was created in 1887, the number of such establishments has greatly grown. This development was particularly rapid in the years immediately following the great depression.

It was at first assumed that these Boards and Commissions were included entirely within the Executive branch of the Government. The Supreme Court in *Humphrey's Executor* v. *United States*, 295 U. S. 602, 629, however, [fol. 49] held that to a considerable extent such regulatory bodies were independent of the Executive. Thus in order to secure their independence, members of such boards and commissions, unlike other appointees of the President, were not subject to removal by the President at will. Mr. Justice Sutherland in his learned and thoughtful treatment of this topic indicated that these agencies were in part quasi-legislative and in part quasi-judicial. It may well be that from the standpoint of political science and constitutional law, we are gradually evolving a Federal government divided into four coordinate branches, instead of three. This is not said in any critical vein, but merely in the interest of clarity of thought. It is entirely possible that the development will prove salutary. The law and political institutions cannot stand still or remain static.

The issue to be decided in this litigation, namely, the status of a merchant ship in a foreign port, lies in a field that has frequently been discussed by the courts as well as by publicists and commentators. These discussions are not always consistent with each other and some of them are difficult to reconcile. For example, there are divergent statements as to whether a merchant ship is a part of the territory of the country whose flag it flies when it is in the territorial waters of a harbor of a foreign country.

In *United States* v. *Rodgers*, 150 U. S. 249, 260, it was stated that as concerns transactions on board merchant [fol. 50] ships, the vessels "are deemed to be within the country of their owners. Constructively they constitute

a part of the territory of the nation to which the owners belong."

In *United States* v. *Flores*, 289 U. S. 137, 155, Mr. Justice Stone observed that a merchant vessel is deemed to be a part of the territory of the sovereignty whose flag it flies for the purposes of jurisdiction to punish crimes committed on board ship. It does not lose that character when in navigable waters within the territorial limits of another sovereignty.

In *Lauritzen* v. *Larsen*, 345 U. S. 571, 584, Mr. Justice Jackson emphasized the importance of this doctrine in trenchant terms (pp. 584, 585):

> "Perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag. Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state.
>
> "This Court has said that the law of the flag supersedes the territorial principle, even for purposes of criminal jurisdiction of personnel of a merchant ship, because it 'is deemed to be a part of the territory of that sovereignty [whose flag it flies], and not to lose that character when in navigable waters within the territorial limits of another sovereignty'."

[fol. 51] On the other hand, expressions may be found to the effect that it is but a figure of speech to say that a merchant ship is part of the territory of the country whose flag it flies, even when the ship is in the territorial waters or a port of a foreign country.

The leading American decision on this general subject is *Wildenhus's Case*, 120 U. S. 1, in which the opinion was written by Mr. Chief Justice Waite. That case involved a homicide committed on board a Belgian merchant ship while it was moored at a dock in Jersey City. It was

held in a *habeas corpus* proceeding that the local New Jersey courts had jurisdiction of the crime, although both the culprit and the victim were subjects of Belgium and members of the ship's crew. As some of the statements in the opinion are basic to the topic here discussed, we shall quote from it at some length (pp. 11, 12 and 18):

> "It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement;
>
> • • • •
>
> "From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and *the general regulation of the rights and duties of the officers and crew towar's the vessel or among themselves.*[3] And so by comity it came to be generally understood among civilized nations that all matters of discipline and
> [fol. 52] all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquillity of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority. Such being the general public law on this subject, treaties and conventions have been entered into by nations having commercial intercourse, the purpose of which was to settle and define the

[3] Emphasis supplied.

rights and duties of the contracting parties with respect to each other in these particulars, and thus prevent the inconvenience that might arise from attempts to exercise conflicting jurisdiction.

"Disorders which disturb only the peace of the ship or those on board are to be dealt with exclusively by the sovereignty of the home of the ship, but those which disturb the public peace may be suppressed, and, if need be, the offenders punished by the proper authorities of the local jurisdiction."

To summarize the basic theory, matters relating to the peace of the ship or those on board, are to be dealt with exclusively by the sovereign of the home of the ship, while disturbances of the peace generally may be suppressed and the offenders punished by the local authorities. While this doctrine relates to the enforcement of the criminal law, the same principles would seem to be applicable to civil affairs. Although the principle is clear, it is not always easy or simple to draw the line and to determine on which side any particular transaction may fall.

The converse of the situation presented in *Wildenhus's Case*, was confronted in two later decisions of the Supreme [fol. 53] Court. In *Wildenhus's Case* a crime committed on board a foreign merchant ship in an American harbor, was deemed punishable by American courts if it disturbed the peace of this country. In *United States* v. *Rodgers*, 150 U. S. 249, and *United States* v. *Flores*, 289 U. S. 137, it was held that an American seaman committing a crime on board an American ship, while the ship was either in foreign territorial waters or in a foreign harbor, could be brought back to the United States and tried in a Federal court. The first of these two cases applied this doctrine to an assault with a dangerous weapon committed on board an American ship by an American seaman while the ship was proceeding through Detroit River, which was within the territorial waters of Canada. The second went so far as to sustain criminal jurisdiction of a Federal court over a murder of an American citizen by another American citizen aboard an American ship while at anchor in a port in the Belgian Congo. This conclusion

was reached in spite of the fact that at the time of the commission of the offense, the ship was attached to the shore by cables at a point two hundred and fifty miles inland from the mouth of the Congo River. Attention has been called to these few decisions in order to indicate the uncertainties of the subject and the vagueness of the limitations on the authority of the United States in respect to foreign merchant ships from the point of view of constitutional and international law, as well as from the standpoint of comity and policy.

It seems proper to commence a consideration of the specific problem that confronts the Court in this case with [fol. 54] a reference to the treaty between the United States and Honduras "of Friendship, Commerce, and Consular Rights", signed on December 7, 1927, and proclaimed on July 23, 1928, 45 Stat. 2618. Article X of the treaty provides as follows (45 Stat. 2625):

> "Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, . . . shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown."

Article XXII, 45 Stat. 2634, provides, in part, as follows:

> "A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. *Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided the local laws so permit.*[4]

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[4] Emphasis supplied.

It may be emphasized that this treaty expressly reserved to the country under whose flag a ship sailed, jurisdiction over adjustment of seamen's wages and contracts relating thereto.

The pertinent statutory provisions that define the power and authority of the National Labor Relations Board are found in the Labor Management Relations Act [fol. 55] of 1947, 29 U.S.C. §§ 141 *et seq.* In 29 U.S.C. § 159, it is provided that:

> "Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rate of pay, wages, hours of employment, or other conditions of employment: . . ."
>
> . . . . . .
>
> "(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—
>
> (A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, . . ."
>
> . . . . . .
>
> "the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

The terms "commerce" and "affecting commerce" are defined in 29 U.S.C. § 152, subsections (6) and (7), as follows:

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country
[fol. 56] and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The phraseology of the statute is sweeping and comprehensive. It contains no restrictions, limitations, or exceptions. There are instances, however, in which a statute is not to be construed literally if such an interpretation would defeat the legislative intent. There are certain canons of statutory construction that serve as guides and aids in determining the intent of the Congress and the meaning of statutes. These precepts must be considered and given appropriate weight depending upon the circumstances of each case.

First, if there are two possible constructions of a statute, one of which may give rise to a constitutional question while the other would not create such a problem, the latter should be preferred, *Crowell* v. *Benson*, 285 U.S. 22, 62; *I.C.C.* v. *Oregon-Washington Ry. Co.*, 288 U.S. 14, 40. To be sure, in the case at bar the plaintiff does not raise any constitutional issue but relies solely on what it urges to be the proper construction of the statute,—else it necessarily would have applied for the convening of a three-judge statutory court. Nevertheless, [fol. 57] such a question lurks in the background and its probable presence may well be weighed by the court in determining how the statute should be interpreted.

If at all possible, any construction of a statute that would be violative of the principles of international law should be avoided. Thus, Mr. Chief Justice Marshall had

occasion to observe that, "an Act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains". *The Charming Betsy*, 2 Cranch 64, 118.

An Act of Congress, no matter how universal the scope of its terms may be, will ordinarily be confined in its operation and effect to the territorial limits of the United States, unless the contrary intention is clearly and affirmatively expressed. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 357; *Sandberg* v. *McDonald*, 248 U. S. 185, 195; *Foley Bros.* v. *Filardo*, 336 U. S. 281, 285; *Air Line Dispatchers Ass'n.* v. *National Mediation Board*, 189 F. 2d 685, 690; 89 U. S. App. D. C. 24.

Repeals by implication are not favored. In other words, a statute will not be construed to repeal by implication an earlier enactment if it is at all possible to reconcile both. *A fortiori* this principle applies when there is an apparent inconsistency between an Act of Congress and an earlier treaty. If at all feasible the Act of Congress will be so interpreted and applied as not to affect the provisions of the treaty. *Chew Heong* v. *United States*, 112 U. S. 536, 549; *Cook* v. *United States*, 288 U. S. 102, [fol. 58] 121; *Pigeon River Co.* v. *Cox Co.*, 291 U. S. 138, 160. In the *Cook* case, *supra*, it was said that "A treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed".

The literal meaning of a statute may not be followed and applied in such a manner as to produce an absurd result or one that is unreasonable and plainly at variance with the policy of the legislation as a whole. To avoid such a consequence, the courts will at times imply limitations and exceptions in a statute that the legislative body has not inserted. Thus it was said in *Holy Trinity Church* v. *United States*, 143 U. S. 457, 459:

> "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. . . . This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a

> statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, make it unreasonable to believe that the legislator intended to include the particular act."

Among the many cases holding to the same effect, are *United States* v. *Kirby*, 7 Wall. 482, 486, and *United States* v. *American Trucking Association*, 310 U. S. 534, 542. In the *Kirby* case, it was stated (pp. 486-487):

> "All laws should receive a sensible construction. General terms should be so limited in their application [fol. 59] as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

It may be helpful to consider the construction and application of other Acts of Congress to foreign merchant ships entering American ports. For example, it was held that an Act of Congress prohibiting the making of advances of wages to seamen, did not apply to a foreign ship with a foreign crew putting in at an American port, if the advances had been made outside of the United States. This result was reached in spite of the fact that the statute contained no such exception, *Sandberg* v. *McDonald*, 248 U. S. 185. On the other hand, a law entitling seamen to receive one-half of accrued wages in every port that the ship entered, was held applicable to foreign ships while in an American port in respect, however, only to wages that had accrued. *Strathearn SS Co.* v. *Dillon*, 252 U. S. 348. It will be observed that the last mentioned case involved an action required to be performed in the United States, while the former held the statute inapplicable to activities that took place abroad.

The National Prohibition Act was held applicable to foreign merchant ships while in American ports, *Cunard Steamship Co.* v. *Mellon*, 262 U. S. 100. The Government,

however, did not attempt to prosecute personnel of such a ship for having intoxicating liquor on board, as perhaps [fol. 60] a literal construction of the statute might have permitted. The Government merely insisted on requiring that such liquor be sealed while the ship was in an American port. This contention of the Government was approved by the Supreme Court.

The Eight Hour Law governing employment on Government contracts was held inapplicable to Government work performed in a foreign country, even though the statute used the terms "every contract" and included no exceptions, *Foley Bros. v. Filardo*, 336 U. S. 281.

The Jones Act governing the rights of seamen to recover damages for personal injuries incurred in the course of employment, was held inapplicable to a member of the crew of a foreign ship who was injured while in a foreign harbor, *Lauritzen v. Larsen*, 345 U. S. 571. Again, no express exception was included in the statute. In the course of his opinion, Mr. Justice Jackson stated (p. 582):

> "But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contract which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

The question whether the Labor Management Relations Act of 1947 applies to foreign vessels operated by foreign seamen shipped under foreign articles, while the vessel is temporarily in an American port, was answered in the negative in *Benz v. Compania Naviera Hidalgo*, 353 U. S. 138. That case involved a ship that sailed into [fol. 61] harbor at Portland, Oregon. It was flying a Liberian flag and was owned by a Panamanian corporation. The crew was made up entirely of nationals of foreign countries, who had signed a British form of articles of agreement at Bremen. While the ship was at anchor at Portland, members of the crew went on strike and picketed the vessel. They designated the Sailors' Union of the Pacific as their collective bargaining repre-

sentative. The picketing was eventually stopped by an order of the court. An action for damages against the Union was filed by the owners of the vessel. The defendants urged that the trial court was without jurisdiction, on the ground that the Labor Management Relations Act had preempted the field. This contention was overruled and it was held that this statute was not applicable. The court indicated that it was not the purpose of Congress to resolve labor disputes between nationals of other countries operating ships under foreign laws (pp. 142, 143). The Court further stated that in order to construe this statute as applicable in such a delicate field of international relations there had to be present the affirmative intention of the Congress clearly expressed (p. 147).

This decision would seem to be dispositive of the issue presented in the case at bar, were it not for the contention advanced by counsel for the defendants and counsel for the intervenor that it was overruled, or at least limited, by the subsequent ruling of the Supreme Court in *Marine Cooks* v. *Panama S. S. Co.*, 362 U. S. 365. That case [fol. 62] involved a Liberian ship manned by an alien crew, whose employment contracts had been executed outside of the United States. The ship put in at Tacoma, Washington, for the purpose of delivering cargo. Marine Cooks and Stewards, AFL, an American Labor union, picketed the vessel. Its owner brought suit for an injunction against this activity. It was held that the Court lacked the power to issue such an injunction because of the prohibitions of the Norris-LaGuardia Act, which precluded the granting of injunctions in labor disputes except under certain circumstances. Counsel argued that since the Norris-LaGuardia Act was applicable, the situation must have been deemed to involve a labor dispute within the meaning of the Labor Management Relations Act. This reasoning is, however, a *non sequitur*. There may indeed be labor disputes outside of the scope of that Act and beyond the jurisdiction of the National Labor Relations Board. The Court expressly referred to the *Benz* case and did not disapprove it or narrow it in any way.

Finally, reliance is placed on *Vermilya-Brown Co.* v. *Connell*, 335 U. S. 377, in which it was held that the Fair Labor Standards Act covered employees of American con-

tractors engaged in the construction of a military base for the United States in an area in Bermuda leased by Great Britain to the United States for ninety-nine years. The question determined by the Court, however, was solely whether the term "possession" as used in the Act to define it geographical coverage, should be construed as com- [fol. 63] prizing a base leased by the United States in a foreign territory for a long term. This question was answered in the affirmative as against a vigorous dissenting opinion written by Mr. Justice Jackson and in which three other members of the Court concurred. The case has no bearing on the problem confronted in this case.

This Court, therefore, reaches the conclusion that the Labor Management Relations Act of 1947, should be construed as not conferring any authority or power on the National Labor Relations Board to conduct elections for collective bargaining purposes among foreign seamen manning vessels flying a foreign flag, and employed under contracts executed in a foreign country pursuant to foreign law. The fact that the corporation that owns the ship may be a subsidiary of an American corporation does not affect this result. Consequently the Board was without power or authority to issue the order directing the election in this instance.

Accordingly, the plaintiff's motion for a preliminary injunction is granted and the defendants' motion to dismiss the complaint is denied. Counsel may submit an appropriate order.

This discussion would seem to lead to a final disposition of this litigation insofar as this Court is concerned. This is not possible, however, on the present state of the record, in view of the fact that the plaintiff has made no motion for summary judgment. No doubt this was due to the twenty-day limitation prescribed by Rule 56 of [fol. 64] the Federal Rules of Civil Procedure, since the twenty-day period from the commencement of the action had not expired when the present motions were argued. As this period has now elapsed, the Court would entertain such a motion at this time.

/s/ Alexander Holtzoff
United States District Judge.

January 18, 1962.

[fol. 65] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER GRANTING PRELIMINARY INJUNCTION AND DENYING DEFENDANTS' MOTION TO DISMISS THE COMPLAINT—Jan. 22, 1962

This cause came on to be heard on December 20, 1961, upon the motion of plaintiff for a preliminary injunction and other relief on the verified complaint, opposed by the defendants and by the intervener, National Maritime Union of America, AFL-CIO, and upon the motion of the defendants to dismiss the complaint. The Court has considered the facts and exhibits as verified under oath in the complaint, the arguments of counsel, and the briefs and memoranda of the parties, including the views of the Department of State submitted by the Department of Justice. Being fully advised in the matter, the Court delivered and filed a written opinion on January 18, 1962. The Court finds that:

In the case before the National Labor Relations Board (hereinafter the Board), described as Case No. 2-RC-10379, re *United Fruit Company and National Maritime Union of America, AFL-CIO*, the decision and direction of election rendered by the Board on November 15, 1961, ordered the conduct of a representation election for collective bargaining purposes, under 29 USC sec. 159(c), [fol. 66] among the Honduran and other foreign seamen, who are employed under contracts executed in Honduras under Honduran law, and who comprise the plaintiff Honduran unions and crews that man the ships registered under the laws and flying the flag of Honduras and owned by the employer the Honduran corporation Empresa Hondurena de Vapores, S.A., which is a subsidiary of the United Fruit Company, an American corporation. The said order for an election exceeds the authority conferred upon the Board by the Labor Management Relations Act of 1947. Since the Board is without power or

authority to issue the order directing the election in this case, it is

ORDERED, ADJUDGED, AND DECREED that, pending further order of the Court, the National Labor Relations Board, its members, officers, agents, employees and successors, and all other persons in active concert and participation with them, be and they hereby are restrained and enjoined from conducting an election for the designation of representatives for collective bargaining purposes among the foreign crewmen comprising the members of plaintiff union, Sociedad Nacional de Marineros de Honduras, who man the Honduran registered ships of Empresa Hondurena de Vapores, S.A.

* * * *

It is further ORDERED, ADJUDGED, AND DECREED, that the security in the amount of $500 filed with the Court on December 16, 1961 shall be continued in effect until the further order of the Court, conditioned for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

[fol. 67] And it is further ORDERED, ADJUDGED, AND DECREED, that the motion of the defendants, the National Labor Relations Board, to dismiss the complaint, be and is hereby denied.

s/ Alexander Holtzoff
ALEXANDER HOLTZOFF, Judge

Dated: January 22, 1962

Approved as to form:

/s/ Norton J. Come
Counsel for Defendants
National Labor Relations Board

[fol. 68] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—
Filed Jan. 23, 1962

The plaintiff, by its attorneys, hereby moves the Court to enter summary judgment for the plaintiff, in accordance with the provisions of Rule 56(a) and (c) of the Rules of Civil Procedure, on the ground that the verified complaint and exhibits annexed thereto, and the pleadings and proceedings heretofore had herein, particularly the opinion of the Court filed January 18, 1962, show that the plaintiff is entitled to judgment as a matter of law.

/s/ Charles S. Rhyne
CHARLES S. RHYNE

/s/ Brice W. Rhyne
BRICE W. RHYNE

/s/ Herzel H. E. Plaine
HERZEL H. E. PLAINE
Rhyne & Rhyne
Attorneys for Plaintiff

January 23, 1962
400 Hill Building
Washington 6, D. C.

[fol. 68a] NOTICE OF MOTION FOR
SUMMARY JUDGMENT—BY PLAINTIFF
(omitted in Printing)

• • • • •

[fol. 68b] CERTIFICATE OF SERVICE
(omitted in Printing)

[fol. 69] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

CROSS-MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS—
Filed Jan. 31, 1962

The defendant members of the National Labor Relations Board, by their attorney, hereby move the Court, in accordance with Rule 56(b) of the Federal Rules of Civil Procedure, to enter summary judgment for the defendants, on the ground that, based on the verified complaint and exhibits annexed thereto and the record of the proceedings before the National Labor Relations Board in Case No. 2-RC-10379, *United Fruit Company and National Maritime Union of America, AFL-CIO*, a true copy of which is annexed to this motion, defendants are entitled to judgment as a matter of law.

s/ Norton J. Come
NORTON J. COME
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.,
this 31st day of January, 1962.

[fol. 70] [File endorsement omitted]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

PLAINTIFF'S MOTION TO STRIKE IMPROPER MATERIAL FROM THE RECORD AND FOR CONSOLIDATION OF MOTION WITH PENDING MOTIONS BY PLAINTIFF—Filed Feb. 2, 1962

The plaintiff, by its attorneys, pursuant to Rule 7(b) of the Federal Rules of Civil Procedure, hereby moves the Court to strike from the record of this case the record of the proceedings before the National Labor Relations Board in case No. 2-RC-10379, *United Fruit Company and National Maritime Union of America, AFL-CIO*, which defendants annexed to their cross-motion for summary judgment filed January 31, 1962, on the ground that the testimony and proceedings before the National Labor Relations Board (other than the decision of the Board, copy of which was annexed to plaintiff's complaint) was not before this Court when it considered the case and rendered its opinion of January 18, 1962; that the Court did not, and could not properly, consider the testimony and proceedings before the Board in deciding this case; and that it would be improper for this Court to review the testimony and proceedings before the Board in dealing with the respective motions of plaintiff and defendants for summary judgment and in granting a final judgment.

The plaintiff respectfully requests that the Court con- [fol. 71] sider and dispose of this motion in connection with the disposition of the pending motion of plaintiff

filed January 23, 1962, and cross-motion of defendants filed January 31, 1962, for summary judgment.

Respectfully submitted,

/s/ Charles S. Rhyne
CHARLES S. RHYNE

/s/ Brice W. Rhyne
BRICE W. RHYNE

/s/ Herzel H. E. Plaine
HERZEL H. E. PLAINE
Rhyne & Rhyne
Attorneys for Plaintiff

400 Hill Building
Washington 6, D. C.
February 2, 1962

[fol. 71a] CERTIFICATE OF SERVICE
(omitted in Printing)

[fol. 71b] CERTIFICATE OF SERVICE OF CROSS-MOTION FOR SUMMARY JUDGMENT—
(omitted in Printing)

[fol. 72] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER TO PLAINTIFF'S MOTION TO STRIKE AND FOR CONSOLIDATION OF MOTION WITH PENDING MOTIONS
Filed Feb. 7, 1962

1. Defendants, members of the National Labor Relations Board, by their attorney, do not object to that portion of plaintiff's motion which requests consolidation of this motion with the motions for summary judgment already filed by plaintiff and defendants with this Court.

2. Defendants oppose that portion of plaintiff's motion which requests that the Court strike from the record of this case the record of the representation proceedings before the Board in Case No. 2-RC-10379, *United Fruit Company and National Maritime Union of America, AFL-CIO*, which defendants annexed to their motion for summary judgment.

In the Board's view, *Lauritzen* v. *Larsen*, 345 U.S. 571, permits it to assert jurisdiction over foreign flag vessels when significant contacts or connecting factors are shown to exist between the vessels and the United States. Based upon evidence taken by the Board in the representation proceeding, the Board concluded that assertion of its jurisdiction was warranted in this case, and, accordingly, directed that an election be held. Upon plaintiff's complaint, seeking review of the Board's action, this Court held that as a matter of law the Board lacks jurisdiction over any vessels flying the flags of foreign nations. Accordingly, this Court did not reach an evaluation of the evidentiary bases upon which the Board predicated its assertion of jurisdiction. However, since the Board relies, [fol. 73] in this and in other cases, upon these contact points in determining whether to assert jurisdiction, the evidence in the record of the representation proceeding, showing the contacts between the vessel and the United

States in this case, may prove significant on appeal from this Court's decision.[1]

Thus, in order to facilitate a complete determination of the legality of the Board's action, we request that the record of the underlying representation proceeding be made a part of the record herein, and that plaintiff's motion to strike be denied.

/s/ Norton J. Come.
NORTON J. COME
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.,
this 6th day of February, 1962.

[fol. 73a] CERTIFICATE OF SERVICE
(omitted in Printing)

[1] See, *West India Fruit and Steamship Co.*, 130 NLRB 343; *Penninsular & Occidental Steamship Co.*, 132 NLRB No. 1; *Eastern Shipping Corp.*, 132 NLRB No. 72; *Hamilton Bros. Inc.*, 133 NLRB No. 85. The Court of Appeals for the Second Circuit relied extensively on these contact points in its decision enjoining the same election as was enjoined by this Court in the instant case. See, *Empresa Hondurena de Vapores, S.A.* v. *McLeod*, January 12, 1962, 49 LRRM 2442.

[fol. 74] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4020-61

SOCIEDAD NACIONAL DE MARINEROS DE HONDURAS,
PLAINTIFF

v.

FRANK W. McCULLOCH, CHAIRMAN, and PHILIP RAY RODGERS, BOYD LEEDOM, JOHN H. FANNING, and GERALD A. BROWN, MEMBERS, NATIONAL LABOR RELATIONS BOARD, DEFENDANTS

ORDER AND JUDGMENT—GRANTING MOTION FOR SUMMARY JUDGMENT, DENYING CROSS-MOTION FOR SUMMARY JUDGMENT, DENYING MOTION TO STRIKE, AND MAKING PRELIMINARY INJUNCTION PERMANENT—
March 6, 1962

1. This cause came on to be heard on March 5, 1962, on a motion for summary judgment by plaintiff filed January 23, 1962, a cross-motion for summary judgment by defendants filed January 31, 1962, and a motion by plaintiff filed February 2, 1962, to strike from the record of this case the record of the proceedings before the National Labor Relations Board.

2. The Court has considered the several motions and the arguments of counsel, and the Court's written opinion of January 18, 1962, which resulted in the order of January 22, 1962, granting plaintiff's motion for a preliminary injunction and denying defendants' motion to dismiss the complaint.

[fol. 75] 3. Accordingly, as a matter of law, the plaintiff is entitled to a summary judgment in its favor, and to an order making permanent the preliminary injunction heretofore issued against the National Labor Relations Board and others therein specified; and defendants' cross-motion for summary judgment should be denied. Plain-

tiff's motion to strike alleged improper material from the record should be denied.

Therefore, it is ORDERED, ADJUDGED AND DECREED that:

A. The motion of plaintiff for a summary judgment in its favor is granted.

B. The cross-motion of defendants for summary judgment in their favor is denied.

C. The motion of plaintiff to strike material from the record is denied.

D. The preliminary injunction, heretofore granted and issued by this Court on January 22, 1962, be and the same hereby is made perpetual and permanent, and the defendants, the National Labor Relations Board, its members, officers, agents, employees and successors, and all other persons in active concert and participation with them, be and they hereby are perpetually and permanently restrained and enjoined from conducting an election for the designation of representatives for collective bargaining purposes among the foreign crewmen comprising the members of plaintiff union, Sociedad Nacional de Marineros de Honduras, who man the Honduran registered ships of Empresa Hondurena de Vapores, S.A.

/s/ Alexander Holtzoff
ALEXANDER HOLTZOFF, Judge

Dated: March 6, 1962

Approved as to form:

/s/ Norton J. Come
Counsel for Defendants
National Labor Relations Board

[fol. 76] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed March 14, 1962

Notice is hereby given that Frank W. McCulloch, Philip Ray Rodgers, Boyd Leedom, John H. Fanning, and Gerald A. Brown, the Chairman and Members of the National Labor Relations Board, defendants herein, appeal to the Court of Appeals for the District of Columbia Circuit from the order and judgment entered in this action on March 6, 1962, insofar as it grants plaintiff's motion for summary judgment, denies defendants' cross-motion for summary judgment and permanently enjoins the Board from conducting a representation election among the foreign crewmen employed on the Honduran registered ships of Empressa Hondurena de Vapores, S.A.

/s/ Marcel Mallet-Prevost
MARCEL MALLET-PREVOST
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.,
this 13th day of March, 1962.

[fol. 77] [File endorsement omitted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER GRANTING MOTION BY NATIONAL MARITIME UNION OF AMERICA, AFL-CIO FOR LEAVE TO INTERVENE—March 28, 1962

This case came on to be heard on December 20, 1961 upon the motion of plaintiff for a preliminary injunction and other relief on the verified complaint, and upon the motion of the defendants to dismiss the complaint. Prior to argument of said motions the Court, on oral application of H. Howard Ostrin, Esq., granted the National Maritime Union of America, AFL-CIO leave to intervene in the above-entitled action.

It is therefore on motion of Intervenor

ORDERED that the National Maritime Union of America, AFL-CIO be and if hereby is made a party to the above-entitled action as an intervenor.

Dated: March 28, 1962

/s/ Alexander Holtzoff
ALEXANDER HOLTZOFF, Judge

No objection:

/s/ Marcel Mallet-Prevost
MARCEL MALLET-PREVOST
Attorney for Defendants

/s/ Charles S. Rhyne
Attorney for Plaintiff

[fol. 78] United States Court of Appeals
For the District of Columbia Circuit

Filed April 9, 1962. Joseph W. Stewart, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 4020-61 Civil Action

SOCIEDAD NACIONAL DE MARINEROS DE HONDURAS, PLAINTIFF

vs.

FRANK W. McCULLOCH, Chairman, NATIONAL LABOR RELATIONS BOARD, ET AL., DEFENDANTS

CERTIFICATION OF RECORD

I, HARRY M. HULL, Clerk of THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, do hereby certify the annexed to be the original pleadings including Exhibits and Reporter's Transcript of Proceedings filed January 5, 1962, and other papers on file in the above entitled cause, and a true and correct copy of the docket entries, as they appear of record in this office; said originals and copy being transmitted to the United States Court of Appeals for the District of Columbia Circuit, to constitute the Record on Appeal.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 9th day of April, 1962.

/s/ Harry M. Hull
HARRY M. HULL, Clerk

[fol. 79]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

CERTIFICATION TO RECORD

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing papers constitute the original record and exhibits transmitted from the United States District Court for the District of Columbia and filed in said Court of Appeals on April 9, 1962, as the record in the case entitled:

No. 16,965

FRANK W. MCCULLOCH, CHAIRMAN, ET AL., MEMBERS, NATIONAL LABOR RELATIONS BOARD, APPELLANTS

v.

SOCIEDAD NACIONAL DE MARINEROS DE HONDURAS, ET AL., APPELLEES

No. ..... Term, 19....., as the same remain upon the files and records of said Court of Appeals.

[SEAL] IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this sixteenth day of August, A. D. 1962.

JOSEPH W. STEWART
Clerk of the United States Court of Appeals for the District of Columbia Circuit.

By /s/ [illegible]
Deputy Clerk

[fol. 80]

SUPREME COURT OF THE UNITED STATES

• • • •

ORDER ALLOWING CERTIORARI—Filed June 11, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this application.